

# TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

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PAN AMERICAN WORLD AIRWAYS, INC.,  
APPELLANT,

*vs.*

UNITED STATES.

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No. 47

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UNITED STATES, APPELLANT,

*vs.*

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

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APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NO. 23 FILED JULY 25, 1961

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ARGUMENT OF L. L. HIGHSAW, JR.  
PUBLIC COUNSEL

Mr. Highsaw: Mr. Chairman, could I have a warning in about thirty minutes? This proceeding brings before us one transaction involving four companies.

On one side of the transaction is Pan American Airways, Inc., the operating air carrier, and its holding company, Pan American Corporation. On the other side of the transaction is Pan American Grace Airways Incorporated, an operating air carrier known as Panagra, and W. R. Grace and Company, a holding enterprise which owns 50 per cent of Panagra and 100 per cent of the Grace Lines, a steamship operator.

The transaction involving these four corporations has evidenced itself in two separate contracts executed on July 31, 1946.

One of these contracts, which for the purposes of the record, is called contract A, was executed between Pan-American and Panagra and provides for through plane operation between the United States and various points on Panagra's route in South America.

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[fol. 3839] The other contract, which is an integral part of the signing transaction, was executed between Pan-American Corporation and W. R. Grace and Company, and provides for the management of Panagra. The discussion of public counsel will be devoted to the merits of contract A, as it is the heart of the transaction before us.

If contract A is disapproved, contract B should fall with it as a part of the whole plan under the doctrine of the Catalina Air Transport Case. Public Counsel does not pretend that the transaction presents an open and shut case, either for or against Board approval. It raises difficult questions of law and policy to decide.

My purpose is to make clear to the Board the reasons why I believe that these issues should be decided against approval of the transaction. So far, Counsel have argued that the contract is either all good or all bad. I would prefer to recognize that like all transactions, it has some good points and some bad ones. I do not dispute the fact that it

will produce certain public benefits as outlined by the parties.

However, as the Board pointed out in the recent Mid-Continent Opinion, the determination of the public interest is a balancing process.

The good points of a transaction are to be weighed against the bad points and a balance struck. Here, I believe that balance is against the public interest, in such a decision I may be wrong, but at least my opinion is not open to the suggest of private interest. I have wrestled with the problems of this case for some weeks and this was the only conclusion that in good faith, as a public servant,

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[fol. 3840] I could reach. I also believe it is fair to say that the parties have somewhat over-stated the benefits to flow from the contract.

The two most important are the economy of joint maintenance and overhaul and the elimination of the connecting service at Balboa.

As to the first, the record could indicate that there would be some saving but it certainly does not prove that the saving would amount to \$560,000 or to any other particular amount. This figure is based on Pan American estimates as to the cost of its maintenance of the four-engine equipment and their has not been enough experience in such maintenance to justify any particular estimate.

As to the elimination of the connection service at Balboa, no one could argue that there is not now an undesirable situation.

However, actually, not many people will be benefited. Under existing facts at 1946 levels of air transportation, only about 23 people a day would use the through service as far South as Guayaquil and that number would dwindle rapidly to three and 1/2 between Lima and Buenos Aires.

Those figures are based on the exhibits put in by Pan American for air travel during the first six months of 1946.

Mr. Lee: Does that mean that 20 would stop at Quay-aquil?

Mr. Highsaw: That means that 20 would stop at Quay-aquil and get off at Quayaquil or Lima.

Disapproval of the contract on the basis of the objection I will raise would not prevent the parties from entering into an interchange agreement free of those objections.

I shall now turn to a brief discussion of each of my rea-

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[fol. 3841] sons for disapproving contract A.

My first reason for disapproval of contract A is that it is in violation of the Civil Aeronautics Act because it provides Panagra with an operation between Miami and Balboa for which it is not certificated.

Throughout this proceeding, there has been a considerable amount of reference to through-operations which will relieve the difficulties created by connecting service at Balboa.

The import of these references is to create a picture of two connecting air carriers bargaining at arms length to supply a public need by providing a through service.

If this picture of contract A is accepted it would be impossible to clearly evaluate the intent and effect of the agreement. The only way in which that intent and effect can be evaluated is by recognizing that the contract is merely a vehicle for compromising the direct conflict between the aspirations of the two co-owners of Panagra, Grace and Pan-American, as to the ultimate destiny of that carrier. Counsel for Pan American yesterday stated about the same thing when he said that the agreement met this fundamental views of the parties.

This could only be the views of Pan American and Grace, the owners of Panagra. What then are those views? On the part of W. R. Grace and Company, those objectives have been the extension of Panagra to the United States under its own name. On the part of Pan American, they have been the keeping of Panagra as a connecting carrier at Balboa to which Pan American could feed traffic for the west coast of South America, and which would not compete

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[fol. 3842] with Pan American as a independent air carrier, either between Balboa or Miami, or effectively with the east coast of South America. The attempt of each corporation to achieve its aspirations has carried all the way to the United States Supreme Court in docket No. 779.

The record shows that they were impelled to try and

reach some agreement here only because of the Board's action in placing Braniff into South America as a competitor in its decision in docket No. 525.

On the basis of past history, it was not likely that either Grace or Pan American would agree to anything which failed to preserve the essence of its position. Grace had already made that plain when in 1941, the Grace designated president of Panagra refused an offer of an interchange agreement by Pan American and stated that Panagra was not interested in any plan which did not provide TWA operations to the United States.

Grace had made its position even plainer by filing its petition to the Board in docket 707 and the complaint in docket No. 744, and in fighting the issues in docket 779, to the Supreme Court. Likewise Pan American has always consistently made clear its intent and purpose.

When the negotiations for contract A started in June 1946, inflexible purposes of Grace and Pan American were still clear. Grace wanted first a certificate for Panagra in its own name to the United States, and second, an agreement whereby Panagra would operate over Pan American's route between Miami and Balboa, and the two would share the revenues.

Negotiations which included discussion as to Pan American buying out Grace interests in Panagra, proceeded and

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[fol. 3843] contract A was executed, which read in the context of its creation, "preserve the essence of both Grace and Pan American aspirations". The parties claim that there is no violation of the Civil Aeronautics Act because the operation north of Balboa is entirely a Pan American one. They have variously referred to the agreement as a through plane operation and a charter operation, and would ask the Board to regard each flight between Balboa and the United States as an operation in a plane chartered from Panagra by Pan American.

They have even gone so far as to contemplate that in the future this charter may occur while the Panagra plane is flying over Balboa in a non-stop flight. They would have the Board reach this result through two paths.

On one hand they would have the Board look at the contract nomenclature and take at face value the language of paragraph six which purports to give Pan American full control and responsibility north of Balboa and on the other hand apply a broad holding-out test.

I believe that the history of railroad and motor carrier regulation shows that the Board must determine whether Pan American has full control and responsibility in the light of the factual situation and all of the surrounding circumstances of this contract, and not by the words of the contract alone.

Moreover, I believe that the application of this test shows that Pan American does not have such full control and responsibility. A reference to the history of interchange operations in the railroad field and the motor carrier field do not bear out the contentions of Pan American and Grace.

Yesterday, some reference was made to railroad experi-

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[fol. 2844] ence, and the impression was left that trains run just with any old place over the tracks of many roads without any requirements of obtaining ICC operating rights or even permission. That is not so. In the field of passenger operations, the Commission for some time vacillated on the issue of whether a railroad which required trackage rights by agreement, to operate a train over the tracks of another carrier, was required to obtain a certificate of convenience and necessity under the Interstate Commerce Act.

By around 1920, it decided that such a requirement was necessary and was upheld by the United States Supreme Court.

In 1940, agreements for trackage rights were put under section 2 of the Interstate Commerce Act and required Commission approval after hearing on a finding that they were in the public interest. I have found no case in the railroad field involving the situation now before us.

However, it is clear from the history of that form of transportation that a rail carrier had and was expected to keep full control of its tracks and that an agreement which relinquished a part of that control to another rail

carrier required approval under the certificate provisions of the Interstate Commerce Act.

Chairman Landis: Isn't that just what is happening here?

Mr. Highsaw: That is my view of the situation, Mr. Chairman.

Chairman Landis: Isn't that what 412 was created for?

Mr. Highsaw: You mean the application is similar to the 5 (2) of the Interstate Commerce Act?

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[fol: 3845] Chairman Landis: Yes.

Mr. Highsaw: I think that the situation as of today is the same with this difference. Under the Interstate Commerce Act, the Commission is required to find that it is in the public interest, and all that the Board is required here to find is that it is unable to find that it is adverse to the public interest.

Chairman Landis: That is the only difference?

Mr. Highsaw: That is the only difference. I have cited this early history simply to show that previous to legislative determination of how this question should be handled, which was made in 1940, that under a situation similar to this one, the ICC might well have held that they had to get a certificate of convenience and necessity for trackage rights.

I don't contend that that is clear because I have found no case which involves exactly this situation. I just wanted to point that out to refute the impression that was left yesterday from some of the argument, that trains run just about any place they please.

Chairman Landis: Cars, not trains.

Mr. Highsaw: I had the impression from the argument that it might have been trains, but that is the purpose of why I brought it out. A reference to the decision of the Commission and the U. S. Supreme Court under the motor carrier act, which is similar to the Civil Aeronautics Act before us, points out the legal test to be applied to claims of Pan American and Panagra. These decisions which public counsel has gone into more extensively on brief, show clearly that the test is primarily whether Pan Ameri-

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[fol. 3846] can has full and exclusive control of the opera-

tion. Panagra has pointed to the cases in the Supreme Court as setting up an additional test of whether Panagra is holding itself out to the public as a carrier. However, the Commission—that is the Interstate Commerce Commission—has interpreted those decisions—and rightly—as applying to a situation where the control and responsibility tests would show two operations instead of one but where history of the two operations showed only a single integrated service. This would not help Panagra at all here since there is no single integrated operation here by Pan American.

The only single integrated operation that you could find in this case would be by Panagra. The decisions of the Commission and the Supreme Court have also shown that in looking for control and responsibility, an examination can not be confined to contract nomenclature, which may be self serving, but that all of the surrounding circumstances and conditions of the operation must be scanned.

Do we find full control and responsibility in Pan American on the basis of such an examination here? If this were a straight interchange agreement each carrier would have complete physical control of the operation of the aircraft over its own segment through operation by its own crews and cabin attendants. Also each carrier would have complete control of the number of schedules to be run over its routes by aircraft of another company, and would have complete control of the timing of those schedules. A through operation would result when each carrier, exercising this complete control over its own segment, brought the aircraft

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[fol. 3847] up to and away from the exchanging point. Each carrier would be completely responsible to its own crews and for the care of the aircraft in its possession. Such was the type of agreement that the Board had before it in the United and Western Interchange Case. What are the differences from that situation here?

Only one carrier can and does have physical control of the aircraft at all times, through operation by its employees who must look to it for pay and must look to it for compensation in case of injury. That carrier is not Pan

American, it is Panagra. Only one carrier has the real power to determine the number of flights that will be operated at all times over all segments of this operation, between the United States and Buenos Aires. That carrier is Panagra.

Only one carrier has the power to enforce its will as to what the schedules shall be of the aircraft it has determined will operate in this service. That carrier is Panagra.

Only one carrier is liable for the crews and cabin attendants of the planes at every stage of the operation. That carrier is Panagra.

Only one carrier is primarily liable for loss or damage to the aircraft at all times between the United States and Buenos Aires. That carrier is Panagra.

What other actual controls Panagra would exercise over the operation if it were certificated in its own name would be small in comparison.

Furthermore, paragraph 6, upon which Pan American heavily relies, does not itself purport to give Pan American full control and responsibility. It is qualified by the phrase "as provided in this agreement". That qualification was

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[fol. 3848] necessary as Pan American did not in fact have full control and responsibility. If it is not a reasonable inference from these contract terms, that the agreement in essence provides for a Panagra operation north of Balboa, I believe that such an inference does arise when the terms are realistically read in the light of the circumstances previously outlined.

In the words of Panagra's president, it always wanted at a minimum "something under which Panagra was operating under Pan American's franchise".

If Panagra were just receiving a promise by Pan American to operate Panagra planes there is no real consideration, for the price paid by Panagra, in barring itself from a route to the United States in its own name for a period of 99 years.

Chairman Landis: There are two things in there, I would like to get the force of your argument. There is nothing that is against the public interest in all these things you cite, but Panagra being in control and so on. So your argu-

ment there is directed purely to the point that the issue should have come up under 401 rather than 412?

Mr. Highsaw: That is correct, Mr. Chairman.

Chairman Landis: And yet, as I view this proceeding, especially in the light of triple or quadruple examination of the traffic situation of the Caribbean by this Board, aren't we in substance considering exactly the same question we would consider in a technical 401 proceeding?

Mr. Highsaw: Yes, Mr. Chairman to a great extent we are. When I get around to discussing the point of this as a precedent for route pattern, I intend to bring out that point, and that is one of the question which has bothered

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[fol. 3849] me considerably in the consideration of this contract—that under a 412 proceeding we can in effect consider a contract which may grant all of the essence of a certificate operation to a carrier, and yet it doesn't have a certificate.

Now, there are some differences, as I intended to point out later, in a 412 proceeding and in a section 401 proceeding and in the former proceeding—

Chairman Landis: If you are going to come to that later on—

Mr. Highsaw: Yes, I intend to come to that.

Chairman Landis: The other point I wanted to ask you is this:

Is there anything in this contract which forecloses Panagra's opportunity to apply to the Board for an extension to the United States?

Mr. Highsaw: I intended to take that point up later on, Mr. Chairman.

Chairman Landis: I am sorry.

Mr. Highsaw: I believe that it does as a matter of fact.

Chairman Landis: Go ahead.

Mr. Highsaw: Further, the real intent of this contract appeared in counsel's statement yesterday morning to the effect, "If we get into New York", referring to Panagra's counsel's statement. There has been some suggestion by Panagra that if the Board should find contract A to be in violation of the Act, the petition filed in this case is broad

enough to cover a request for an exemption order under section 410 B of the Act.

This request alone constitutes some indication that the

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[fol. 3850] that the parties are not quite so sure that the operation would not violate the Act as would be indicated from the arguments made by their counsel. Moreover, the petition was filed by Pan American and Panagra concurred therein, only to the extent of the request for approval under section 412, in spite of warnings from practically all counsel in the proceeding, so that there is not now on file with the Board any request for action under any other section of the Act except by Pan American and the only operation that would call for an exemption order would be a Panagra operation.

Finally, although Public Counsel raised the legality of the proposed operation at the prehearing conference in this proceeding, Panagra never mentioned anything about an exemption order until its brief to the Board, and the record does not contain one scintilla of evidence in support of such an order unless such can be implied from evidence of Pan American's refusal to permit Panagra to apply for a certificate in its own name. The use of such evidence to support an exemption order would be doing the greatest violence to section 412.

At this point, I would like to take up the question I raised in my brief with respect to the precedents set in this case for approving this as a pattern for interchange agreements. This question was discussed at some length in the brief and I do not intend to go into it fully here for the reason that after a full consideration of this issue in the time which followed after the brief time in which we had to prepare briefs, some very serious questions have arisen in my mind along the lines that the Chairman has previously indicated,

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[fol. 3851] as to the logic of the position which was taken in the brief. In the brief, I pointed out the difference between the interchange agreement of the type that we had in the United Western case and the proposed type of agreement here, and I indicated that the sole proper purpose of an interchange agreement was to achieve through

plane operation between two connecting carriers, that this agreement had a considerably larger purpose in mind, and that I thought that there was some danger that approving this type of agreement would set a precedent so that when a similar type of agreement came up between any two connecting air carriers in the United States, there would be a grave danger that the route structure would be undermined, by such agreements.

After very careful consideration of this question following the writing of the brief, I arrived at the logical difficulty which the Chairman has just stated, namely, that in a 412 proceeding, we have to consider, under the public interest, apparently all of the question which were involved in a consideration under section 401 of the Act.

Consequently, it would logically appear that the Board in considering a contract such as this under section 412, would have ample opportunity to consider all those issues, and logically there would be no question about undermining the route structure.

However, I am still troubled by one fact, and I think that without going into this question at great length, I shall leave that to the Board.

I have no answer to it frankly, but it still troubles me and I think that it should be considered, and that is that

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[fol. 3852] in a case involving four applications for a certificate, hearing is mandatory; interested parties automatically have notice, and presumably a Board decision would be based upon a majority of the members of the Board that sat upon the case.

In a proceeding under section 412, although the public interest may be considered, the situation is not quite the same. The Board could approve the agreement the day after it was filed, without filing any notice to any interested parties at all. It is not even clear that if it intended to disapprove the agreement that a hearing is required under the constitution. It certainly is not required under any statutory provision.

Also, there is a very serious question under section 412 and the Board may be confronted with it in this very case. Where there are only four members of the Board sitting,

and the Board should possibly split two and two on a matter of this kind, what the effect of that would be. All that section 412 states is that you have to find that it is adverse to the public interest in order to disapprove. All of those questions have troubled me, at great length on that matter, and I have no answer for them.

I am just quite frankly raising them here this morning and hoping that the Board can find a better answer than I have been able to find.

Chairman Landis: Well, maybe the Board ought to look at a statute of this nature. Most statutes are rather imperfect when they are granted, and in their conception, look at this statute as a dynamic thing and relate its procedure accordingly and to use the phrase Mr. Friendly used

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[fol. 3853] the other day, that we don't fall into an attitude in these cases, before us with the technique of Barron Parke. There is a great deal of legalism that is creeping into the administrative machinery.

Mr. Highsaw: I agree, Mr. Chairman that that might well be the approach to the question. I don't know that that is the answer to it though and I just wanted to raise the problem here. As I said I wanted to be quite frank with the Board. I made that argument on my brief and after having considerable time to look into it, the logical difficulties which you raised, Mr. Chairman, presented themselves to me.

Chairman Landis: We appreciate your consideration of it.

Mr. Ryan: As I understand it, all of the issues of public interest that could be raised under a 401 case could be raised in the present case?

Mr. Highsaw: That would seem to me so and the point that troubles me, Mr. Ryan, is that in a 412 proceeding which may be entirely different than a 401, proceeding, you can effect or grant to a party the essence of all the rights which the section 401 provides for.

Chairman Landis: In this particular case, we might take judicious notice of the fact that it has been fought less violently and less severely than a new route case.

Mr. Highsaw: I think that is true. My next reason for disapproval of the contract A is that it bars Panagra from

seeking a new route to the United States in its own name and destroys the possibility of competing with Pan American as an independent air carrier. In view of yesterdays discussion, it should be made clear that this point does not

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[fol. 3854] raise the question of the destruction of existing competition between Pan American and Panagra. There now is no such competition between the United States and Balboa and is limited to competitive points in South America by reason of the connection service in Balboa. This point relates solely to Panagra's future status in the air transport picture in relation to Pan American.

The record is clear that this agreement does destroy all future possibility of competition between the carriers, although there is no specific provision in the contract to prevent Panagra from applying for a certificate to the United States, in its own name, the record is clear that it intended to and will operate to bar Panagra from seeking such a route.

Moreover, the existence of the provisions of paragraph six of contract B between Pan American Corporation and Grace for staying the proceedings in docket 779 plus the record in contract A destroy all possibility of ultimate conclusion to docket No. 779 which would enable the Board to grant Panagra such a route. In addition to the intent of the contract with respect to the United States-Balboa segment the contract is intended to eliminate competition between the United States and the competitive points in Montevideo and Buenos Aires by providing the pooling and division of revenues to those points.

Although the terms of the pooling agreement had not been formulated the contract binds the parties to negotiate such an agreement. If they fail to do so, then the terms will be decided by arbitration. Counsel for Panagra says that there is no certainty that a pooling arrangement will

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[fol. 3855] ever be entered into. Under the contract, the parties are committed and it as certain as anything in the agreement.

The reason for the decision by Grace and Panagra to execute this agreement instead of continuing to seek a certificate and establish Panagra as an independent air carrier is clearly shown in the words of Mr. Roig, Panagra's president. I believe these words were read yesterday as part of a larger quotation, but I would like to repeat a part of them now as I believe they are important. When asked whether or not he was sacrificing a competitive opportunity in making this agreement, Mr. Roig, at page 476 of the transcript replied:

"That is not correct \* \* \* and I really don't feel that it is a fair question. I don't consider that I am sacrificing something that I have never had, that I have worn my hair gray and my bones bare trying to get, a great deal of the effort being not only with the Pan American Airways and the Civil Aeronautics Board in the United States Courts, and have been at every stage of the game refused."

Here is the picture of a man who was literally bludgeoned into giving up the hope that Panagra could operate in relation to Pan American as a completely independent air carrier in its own name. This result, and the status for Panagra pictured here, are clearly contrary to the Board's expressed opinion as to the public interest as set forth in docket No. 525, only seven months ago. In that opinion the Board outlined the Grace Pan American controversy and concluded as follows:

"IN addition, we have long recognized the desirability of application to the Board which would permit a determination of the question of extending Pan American Grace

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[fol. 3856] Airways from its present terminal at Balboa to a point in the United States."

"In view of the facts above outlined, we feel that the joint owners"—i.e. Panagra—"should in the public interest cooperatively enable Panagra to apply for access to the east coast of the United States."

It would appear to public counsel that in this opinion, the Board concluded that even with Braniff certificated to

South America, it was in the public interest to have the Board consider in a certificate case the issue of letting Panagra operate to the United States in its own name as a competitor of Pan American. Everyone in this proceeding has so interpreted the decision, even Mr. Roig—and Mr. Friendly concurred in Mr. Roig's statement on this point—conceded that a literal reading of the decision meant that Panagra should have its own certificate.

His own action at the time the decision was issued would refute any other claim. Even now, the parties do no more than assert that the agreement before us complies with the spirit of the decision. I believe that the Board's decision in docket No. 525, and the reading of contract A in the light of such decision poses the fundamental problem in this case other than the legal issue which I have already raised. The transaction before us is squarely contrary to the Board's declared position on the possible future status of Panagra. Indeed, the agreement is an open flouting of that decision and the challenge of the Board to make it good.

The Board must now face the fact of whether it desires to reverse its declared position of seven months ago on the public interest and approve this agreement, or stick to its

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[fol. 3857] then held concept of the public interest and disapprove the agreement. That is not an easy dilemma but it is one that I believe must be faced.

Public Counsel, in the absence of any facts of record which would show a change of circumstance in the last seven months as to indicate the basis of that decision no longer stands, does not see how he can conclude otherwise than that the opinion of the Board as there expressed still does stand and he must examine the contract in that light.

If the public interest requires that Panagra apply to come to the United States as a carrier in its own name as indicated by the Board seven months ago, this contract is bad. It is not only bad, but represents an open defiance of the Board no different in content from any other defiance of the Federal government. In the light of such circumstances, I believe that the Board should disapprove this

contract and do all that it can to permit Panagra to apply for a certificate in its own name. The Board should not take any position which would interfere with the prosecution of docket 779 or anti-trust proceedings against either Pan American or Grace or both.

I believe that approval of this contract would destroy all hope of continuing docket No. 779, and would seriously hamper any anti-trust action. It would give complete immunity from the anti-trust laws for any act taken pursuant to the agreement.

Since this contract grew out of the controversies in both docket 744 and docket 779, I believe that the approval would also interfere as a practical matter with the prosecution of a suit based on facts there shown or alleged. On the points raised yesterday by you, Mr. Chairman, as to

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[fol. 3858] whether or not it is now a question of do or die for Panagra, I would like to say that I don't believe that that alternative is presented. The parties to this contract have had it in their power from the beginning and to me they could execute a straight interchange agreement free of the objections to this agreement.

Moreover, it is within the power of one of those parties to let Panagra apply for a certificate in its own name. The refusal to do so constitutes no reason why an agreement otherwise not in the public interest should be approved. The responsibility for killing Panagra, if that should result from disapproval should rest where it lies, not on the Board, but squarely on Pan American.

Chairman Landis: I don't think you quite got my point on that. You draw a picture of Panagra being bludgeoned by Pan American into this contract, don't you?

Mr. Highsaw: That is correct.

Chairman Landis: I wonder who is doing the bludgeoning, whether it is Pan American or whether it is the Board.

Mr. Highsaw: Pan American or the Board?

Chairman Landis: Yes.

Mr. Highsaw: Well, I think the Board's—

Chairman Landis: Mr. Roig's head was bloody but unbowed until the Latin American decision comes along and then the Latin American decision comes along and accord-

ing to your picture of it, he then decides his bones are too bare and makes the agreement, and what is the additional thing that is coming there but the bludgeoning factor of the Board, so the picture can be looked at differently it seems to me, than saying bludgeoning. It had bludgeoned and as

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[fol. 3859] I say, Mr. Roig's good and firm until the Latin American decision came down, and furthermore, on the problem of do or die for Panagra, I wonder as to the effect of the re-opening of the Latin American case, with regard to segment to Balboa. That perhaps has a bludgeoning effect even in excess of the Latin American decision.

Mr. Highsaw: Mr. Chairman, I agree with you that the decision of the Board in docket 525 was a bludgeon to compel Pan American to recede even a little bit from its previous position. However, I think it is a question of the size of the bludgeon. Apparently, it wasn't quite big enough to Pan American to force it to recede completely from its position and letting Panagra apply for a route as Panagra wanted to.

It was sufficient for Pan American to recede to the extent of trying to get this agreement through the Board first, which it would prefer rather than a route, and I think that Panagra, as Mr. Roig indicated, pretty well worn out by the whole business, did take this, although I think they bargained strongly to get as much as they could, but they did take this as an alternative.

Chairman Landis: If the situation had remained stable so far as the South American situation was concerned, Mr. Roig might have stood firm; but here, with the actual threat to Braniff which occurred as a result of 525 and to which the record has reference, and the potential threat of moving the point of communication with the United States from Miami to Balboa, as a result of the reopening of the Latin American case, doesn't that change and alter the entire picture drawn by those remarks in 525?

Mr. Highsaw: No. You mean you are referring to the

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[fol. 3860] two things—the opening of the Latin American case and the foreign competition situation, is that the two things?

Chairman Landis: Well; I am not referring so much to the foreign competition, but suppose—take this as an illustration—suppose an independent American carrier is extended to Balboa. Doesn't that do just about the same thing as extending Pan American up to Miami?

Mr. Highsaw: Panagra up to Miami?

Chairman Landis: I mean Panagra up to Miami.

Mr. Highsaw: If an independent American carrier is extended to Balboa?

Chairman Landis: Yes.

Mr. Highsaw: I don't think that it does the same thing that the Board had in mind when it issued the decision in 525 which was, namely providing a one-carrier service from the United States down the west coast of South America. I think that to the extent that it would provide a competitive carrier in between the United States and Balboa it would do the same thing.

Chairman Landis: Well, of course, it doesn't exactly do the same thing but the necessity for getting Panagra an access to the United States, not through Pan American would be solved by the extension of an independent carrier to Balboa, if that is the problem, because you certainly can't put Panagra into every city in the United States.

Mr. Highsaw: I would like to call attention to one other fact, Mr. Chairman.

I don't remember the exact date on which the Pan American case was re-opened, but it is my impression that the

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[fol. 3861] negotiations for this contract were begun immediately after the Latin American decision and not after the Latin American case was re-opened, and that they had probably progressed almost to the point where this contract was agreed upon before that case was opened.

Chairman Landis: Well, of course, it is pretty hard to draw those facts, because briefs urging reconsideration of that phase of the Latin American case were filed long before the Board issued its order to re-open the case, but how much that may have swayed—what does the record show on that—anything?

Mr. Highsaw: The contract was authorized to be signed on July 31, 1946, but it is my impression from the record—

I may be wrong on that—I am willing to stand corrected if Mr. Friendly or Mr. Gesell say I am wrong—that the basic outline of the plan had been agreed upon relatively around the first of July, but I could be wrong.

Chairman Landis: Maybe so, but whether there may be a relationship of fact there, you can readily see that after the decision in 525 the opportunity that had been there just lying in front of Panagra for years—the desirability of extending it up to the United States—that would seem to me to be radically changed after 525. Then the issue becomes as to whether we ever want Panagra in the United States. I mean you have had a long experience with this controversy, this Pan American Panagra controversy—even some proceeding which would release Panagra, still not perhaps make it an independent carrier. The history of the anti-trust laws, of course, is full of that, of decrees being issued, companies being reorganized and yet like

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[fol. 3862] Leopards not being able to change their spots, and that being the case, doesn't 525 indicate a new approach to the whole South American situation by the Board?

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[fol. 3863] Mr. Highsaw: Mr. Chairman, I don't think I know the answer to that because I really don't know what influenced the Board in reopening 525. That, of course, would be within the Board.

It is possible, I agree with you that that interpretation is possible that the Board reexamined 525 and did not think it was in the public interest possibly for Panagra to be extended and it was going to look into the situation further in this reopening and therefore its language in the opinion is no longer of any effect, but I don't know whether that is what the Board really thought or not.

But, I certainly think that if the Board approved this agreement it is going to have to find some grounds to get around its decision in 525 that makes sense, and would have to explain that fact.

Chairman Landis: Wait a minute.

The decision in 525 doesn't say this, does it? it doesn't say, "Despite the fact that we have put competitive service into South America by the extension of Braniff, by

the extension of Chicago and Southern, despite all that we still think that the answer to the South American situation is to extend Panagra to the United States."

Does it say that or does it say, rather:

"A nice solution to this thing would have been, instead of taking an inexperienced carrier in the international field, such as Braniff—a nice answer would have been to extend Panagra."

Mr. Highsaw: The language of the opinion indicates to me that it is not referring to something which might have

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[fol. 3864] been, but rather to something for—

Chairman Landis: The future.

Mr. Highsaw: —in which it looks to the future.

These words "in view of the facts above outlined we feel that the joint owners should in the public interest cooperatively enable Panagra to apply for access to the East Coast of the United States" seems to me to indicate that the Board was looking to the future.

Again, I can't read the Board's mind. I am just interpreting the words on paper.

Chairman Landis: Of course it is not a question of reading the Board's mind. It is trying to see what those words mean. If those words mean—you will recall that after 525 there was still open an important link from Balboa to the United States. Panagra made no application.

I imagine this interchange business was going on.

Then the Board reopened that.

Now, the reopening of that case also has a bearing on this situation, doesn't it?

Mr. Highsaw: I would agree with you, Mr. Chairman.

Chairman Landis: Perhaps the answer is: "Oh, we have fooled around with Panagra long enough. Let's not bother with that any more. Let's see if there is not a better solution."

Mr. Highsaw: I agree with you, Mr. Chairman, that the Board may well have changed its mind.

Chairman Landis: It isn't a matter of changing its mind. Here it had been giving this opportunity to Panagra, and in fact freezing onto a situation in the hope that something

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[fol. 3865] would happen to this Panagra-Pan American mess. Nothing did happen. Therefore you think of other ways to skin the cat.

Mr. Highsaw: I am not quite sure I follow you there. You mean nothing happened between the time the 525 decision was issued and the determination to reopen?

Chairman Landis: Nothing happened. At least, I am not sure that the record shows. Certainly no application was filed by Panagra.

Mr. Highsaw: That is right. That was a space of six weeks or so and I agree with you that it may have influenced the Board in that matter.

Mr. Branch: That is just speculative though, isn't it?

Mr. Highsaw: It seems speculative to me.

Chairman Landis: Anybody could have their own interpretation about it. There is nothing that is conclusive in the 525 proceeding on this point.

Mr. Highsaw: There is nothing that is conclusive. It is just a question of reading the words and drawing a reasonable interpretation and that is the reasonable interpretation which I drew of them, Mr. Branch.

Mr. Branch: Tell me your interpretation.

Mr. Highsaw: My reasonable interpretation that I drew of them was that the Board indicated there that it had not finally settled this South American situation that it thought in addition to the fact that it put Braniff down there that it should still have Panagra come up to the United States if there was some way of letting it apply for a certificate, and I think that certainly the record indicates that is cer-

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[fol. 3866] tainly the interpretation that Panagra and Mr. Roig put on it because it had no sooner come off the press than he jumped to that conclusion and made an effort to so apply and was refused by Pan American and there is no indication in the record that any of the parties to this proceeding interpreted it any other way and all they have ever said in regard to this matter of complying with the Board's mandate is that they think they "substantial" have complied, to quote Mr. Friendly.

[fol. 3867] Mr. Branch: I think your interpretation is good. Your interpretation coincides with my interpretation and I participated in the case. I think it is a good interpretation.

The Board has for two or three years indicated quite an interest in this matter, hasn't it, in more than one case and it has spoken very plainly about it, hasn't it?

Mr. Highsaw: It runs back several years, the Board's interest in this, and my interpretation all along is that the Board's interest has flown in the direction of getting Panagra to the United States.

Mr. Branch: And several months ago, in May I think it was, in the Latin American case, it stated, in very plain words, that it was its opinion that the joint owners of this Panagra enterprise should get together and, in the public interest, permit that carrier to apply for an extension to the United States.

Nothing the Board has said since then indicates that the Board has changed its mind about it, does it?

Mr. Highsaw: I didn't think so, Mr. Branch, or I wouldn't have taken the position I have in this proceedings. I felt as Public Counsel, I was bound—

Mr. Branch: The fact that the Board granted a petition for reconsideration in the Latin American case, or in certain phases of it, namely, the question of whether there should be another carrier from the United States to the Canal Zone—and I believe whether Pan American should go into Curaçao or Caracas, didn't indicate that the Board had changed its mind about the desirability in the public interest of Panagra to apply for an extension, did it?

[fol. 3868] Mr. Highsaw: I don't believe that it did, Mr. Branch.

Mr. Branch: We were confronted with a situation. Nothing had been done, and we had very insistent application or applications here for reconsideration on that one point.

The Board had not had anything over the years that it had anything to encourage it that was going to get anything to result from the Latin American opinion so it reopened it so it could take another view of the situation.

Now, the decision to reopen the case didn't say anything, nor as far as I can see even intimate that because Braniff had been put in, Chicago and Southern had been put in, that the Board had abandoned any further interest in Panagra coming to the United States. I don't know of anything, do you?

Mr. Highsaw: I don't know of anything, Mr. Branch.

Mr. Branch: Now, if an independent carrier is extended to Balboa, it would be a little different sort of a situation than if Panagra, a company at least 50 per cent controlled, and negatively controlled, by another air carrier, should be allowed to come into the United States, wouldn't it?

Mr. Highsaw: It would be different in several respects. It would be different as between Balboa and the United States, that operation, because, as you say, Panagra would still be controlled 50 per cent by Pan American.

Mr. Branch: It would not be a completely independent carrier.

Mr. Highsaw: It would be different to the extent that you would still have a connecting service at Balboa between Pan American and Panagra and whatever that third carrier was.

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[fol. 3869] Mr. Branch: Panagra does have some advantage in that it operates all the way down the West Coast from the Canal Zone and then cuts over down at the southern extremity of South America to B.A. in Argentina, so that if it is extended there would be some public advantage there over what it has now, what it can provide now by reason of the fact that it dead ends at the Canal Zone, is that right?

Mr. Highsaw: That is correct.

Mr. Branch: And if it were extended into the United States, the public who traveled on the West Coast there, even though Pan American had some sort of veto power on it, it nevertheless could provide a better public service than it can now.

Mr. Highsaw: That is right.

Mr. Branch: But that doesn't mean the same sort of situation if an independent carrier went down, does it, so far as the public interest is concerned?

Mr. Highsaw: That is right.

Mr. Branch: I was just a little worried about the interpretations that are being placed here. The Board's decision in the Latin American case renewed in stronger terms the suggestion that it made in previous cases, about that matter, the desirability?

Mr. Highsaw: It seems to me—

Mr. Branch: Now, that could be called a bludgeon if you want to, but it wasn't a very effective bludgeon, because the Board didn't say anything about a charter arrangement.

The Board had in mind from the beginning an arrangement whereby Panagra would operate here on its own rights.

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[fol. 3870] Mr. Highsaw: That is my interpretation.

Mr. Branch: And this does not do that.

Mr. Highsaw: It does not.

Mr. Branch: So that if it was a bludgeon it was not a very effective bludgeon.

Mr. Highsaw: I didn't believe it was.

Mr. Branch: So what resulted, what it had in mind, was the proposal—was that not what it had in mind?

Mr. Highsaw: That is my position and I think it is the very point that is going to have to be faced up to in this proceeding.

The Board may very well decide that its opinion in Docket 525 should be changed, that it isn't in the public interest under the present circumstances to extend Panagra to the United States, but I think it is going to have to face up to that issue because I think it has a direct relation on this contract.

Chairman Landis: I believe I didn't make myself clear. Mr. Highsaw. Your argument rests upon the statement of the Board in the 525 case that Panagra should be extended to the United States. That is basically your argument, isn't it?

Mr. Highsaw: That is correct.

Chairman Landis: Is there any statement by the Board at any time to the effect that Panagra should be extended to the United States even though an independent carrier is put into Balboa.

Mr. Highsaw: I know of no such statement, Mr. Landis.

Chairman Landis: Is that issue pending before the Board now?

Mr. Highsaw: That issue is now pending in reopened 525

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[fol. 3871] I believe.

Chairman Landis: Therefore, in order to support your position you must insist that an independent carrier should not be put into Balboa?

Mr. Highsaw: No, I don't believe that necessarily.

Chairman Landis: Or else you have to rely upon a statement by the Board to the effect that it is desirable to extend Panagra to the United States even though an independent carrier is put into Balboa. I can see no other basis upon which you can rest.

Mr. Highsaw: I don't believe that that necessarily follows, Mr. Landis. The reopened 525, as I understand, can't put any carrier beyond Balboa. It can't have a service from Buenos Aires all the way up the West Coast of South America to the United States and it seems to me that the Board's decision in 525 was directed to that point and the most that can happen in the reopened 525 is to establish an additional connecting service and it may well be that the Board perhaps thinks that that offsets or changes its views in 525. I don't know the answer to that, but I don't believe that it is the same thing as if the circumstances had been such that the Board could have completely reopened the Latin American route case and considered applications running all the way up the West Coast of South America to the United States.

Chairman Landis: That isn't the issue. Let me go through that reasoning that I went through before. You start from the statement in 525: It is desirable to extend Panagra to the United States. Let's assume that that state-

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[fol. 3872] ment correctly represents the situation. My point is that there is no statement by the Board at any time that it is desirable to extend Panagra to the United States even though the independent carrier is put into Balboa.

There is pending before the Board an issue as to whether an independent carrier should be put into Balboa?

Mr. Highsaw: Yes.

Chairman Landis: If the Board concludes that it shouldn't be then I suppose you fall back on the statement which justifies your argument, to-wit: that Panagra should be extended to the United States.

Mr. Highsaw: That is correct.

Chairman Landis: But if the Board concludes that it shouldn't put an independent carrier into Balboa, then the validity of that statement—I mean the statement in 525—would have to be completely reconsidered and you would have to consider the point that it would be desirable to extend Panagra to the United States despite the fact that an independent carrier has been extended.

Mr. Highsaw: I think that is dependent, Mr. Landis, strictly on what the Board had in mind when it did these various things.

Chairman Landis: The Board had in mind a situation which was governed by—as far as I can see—it was governed by its conclusion of not putting an independent carrier into Balboa and I fail to read the Latin American case to say that despite the fact of putting an independent carrier into Balboa it is still desirable to extend Panagra to the United States.

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[fol. 3873] Mr. Highsaw: That is a possible interpretation, Mr. Landis, and I wouldn't dispute that fact. It is not the way I read the opinion, but I think it is a possible interpretation.

Chairman Landis: Wait a minute. I don't think you could question that. Do you argue that the statement in 525 is to the effect that despite whatever is done, whatever may in the future be done with reference to extending an independent carrier to Balboa, nevertheless it is desirable to extend Panagra to the United States.

Mr. Highsaw: I think it is open to that interpretation. I don't know that that is conclusive but I think it is open to that interpretation.

Chairman Landis: You have to argue that interpretation in order to support your argument?

Mr. Highsaw: Well, I think the Board, when it said that in 525 in regard to Panagra, was not thinking just of the

Balboa-Miami segment, that it was thinking of the whole South American picture and the through operation from Buenos Aires in contrast to the through operation of Pan American down the East Coast.

That is what I would base my views on in the matter, and it was not thinking just of that one local service.

Chairman Landis: Well; the Board had denied that service, it had left that gap in its pattern, when it makes this statement?

Mr. Highsaw: That is true.

Chairman Landis: Now, I just want to find a statement by the Board, if I am to follow your argument, to the

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[fol. 3874] effect that whether or not an independent carrier is extended to Balboa, nevertheless it is desirable to extend Panagra to the United States.

Mr. Highsaw: I don't think you can find that statement.

Chairman Landis: I can't find it.

Mr. Highsaw: That is correct.

Mr. Ryan: Let me ask you a question that also goes into history. I will go a little bit further.

Has the Board ever made a finding that the public interest, public convenience and necessity, required the extension of Panagra to the United States, independent carrier or no independent carrier being in the picture?

Mr. Highsaw: No, Mr. Ryan. This statement in 525 that I read goes strictly to the point of Panagra applying for the certificate.

Mr. Ryan: Applying, that is right.

Mr. Highsaw: So the Board could consider the issue.

Mr. Ryan: Now go to the main history behind that, as recited in there. That was the history and the main point of that history was that the Board instituted an investigation to determine whether or not the public interest would require the compulsory extension of Panagra to the United States.

Did the Board, at any time in that proceeding make a finding that the public convenience and necessity required the extension of Panagra to the United States. That is the early history.

Mr. Highsaw: I don't remember all of the facts of that decision but I would say that it did not.

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[fol. 3875] Mr. Ryan: Now, remember the history in the background. There was a complaint made by Panagra that Pan American, its 50 per cent stockholder, was restraining its management from filing an application for an extension of Panagra to the United States.

The Board had just handed down a decision in the Matson contract case, in which it had disapproved the Matson contract because its contract with Pan American contemplated the creation of an air carrier in the Pacific which would be limited under the terms of the contract in its ability to apply for new routes.

The Board disapproved that on the ground that that was a restraint upon the freedom of carriers in the public interest to make applications and to permit the Board to pass upon the question of whether their route system should be extended.

There then followed—by the way, that was an insistence by the Board of the right of that carrier, which would be created according to the terms of the Matson contract, to apply for routes before this Board.

The Board has never, in its subsequent action, in which it has denied Hawaiian, for example, the opportunity to go to Japan and China and to the United States, has never apparently given any indication that when it disapproved that Matson contract it was making, in effect, a finding that there was the public convenience and necessity for extending that supposed airline, expected to be created, to the United States or anywhere else.

I am just wondering whether, upon the history here,

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[fol. 3876] whether it is proper for us to interpret the action of the Board in the investigation of Panagra, the investigation of the question of whether it should apply for a certificate to come to the United States, and whether we should construe this statement in the Latin American, which also speaks of the ability of Panagra to apply for a certificate to the United States—whether we should construe that as an implied finding by the Board upon the

merits of the issue, as to whether it should be brought to the United States.

It seems to me that you have to stretch language considerably, in the light of the history, in order to work out a finding there that Panagra should be extended to the United States.

Isn't it also reasonable to construe it as we did in the Matson contract case, namely: we want Panagra, because it has filed a complaint with us and said it was not free—we want Panagra to have the same ability to file an application that we wanted that carrier created by the Matson contract to have—a freedom to file an application, giving this Board the opportunity to determine the public interest, rather than any implied finding that the public interest demands that Panagra be brought to the United States.

Isn't that as reasonable a construction as the one which you place upon it?

Mr. Highsaw: Let me say first, Mr. Ryan, I don't believe the Board could legally, and it certainly would have been an unwise policy to have stated in Docket No. 525, or any other case for that matter, without a proper certificate proceeding, that Panagra should be extended to the

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[fol. 3877] United States, because it would almost have foreclosed itself when a 401 proceeding did come along, if it did.

So, consequently, I think it had to adopt the language that it did adopt here.

Mr. Ryan: That is to say that that language, the right to apply for a certificate to the United States, must be construed as an intention—as a statement—by the Board, that it should be brought to the United States, is that right?

Mr. Highsaw: That it should be brought to the United States.

Mr. Ryan: Yes.

Mr. Highsaw: I don't think that the Board could have stated that in so many words for the reason I have just stated. However, I do think that the whole history of the terminal investigation and the statement here in Docket 525, indicates that the Board was perhaps going further than in the Matson case.

It wasn't interested just simply in the right of Panagra to apply. It was also interested in the possibility of getting Panagra into the United States.

Mr. Ryan: If the public interest upon the record of the case justified.

Mr. Highsaw: That is right. It had to hold back that qualification. It couldn't legally do anything else.

But now that, remember, was in a period before the Latin American decision. That was at a time when we had no competition at all into Latin America, and the Board apparently was of the opinion that there wasn't traffic enough

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[fol. 3878] —not sufficient traffic potential—to have put an additional carrier into South America, and it dangled with the possibility, if the public interest should be revealed upon the record that way, that maybe we could accomplish the competition purpose, by breaking up a system which was under control here, one branch of which was under the control of the other—at least negative control—and establishing two independent competitive air carriers, and so, even then, it only was exploring the possibility —first the legal question, whether it had the right to compel the extension, and second, whether, if having the right to compel the extension, it would be in the public interest to order the extension.

Mr. Ryan: It seems to me that the Latin American decision changed the picture, so that now you have the competition in South America that you didn't have at the time of the institution of the Panagra investigation.

Mr. Highsaw: I agree with you, Mr. Ryan, that the circumstances are different now than they were from the time of the Pan American terminal investigation, which dates back a few years.

However, the language which I have been referring to here was in the Docket 525, which was at the same time that the Board created the present competitive situation in South America, and following along with it, and its language looking in in futuro toward the possibility of extending Panagra to the United States in a proper proceeding.

Mr. Ryan: But even there the Board in that decision might say "We think that since Braniff is the independent

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[fol. 3879] air carrier now competing in South America and since the only point here is to fill up a gap in a pattern, that perhaps Braniff should be given a route from the Canal Zone to Miami thereby providing the single independent carrier competition in South America." There was no foreclosing of that possibility.

Mr. Highsaw: If the Board had held a 401 proceeding on application for Panagra, I think it could have explored that possibility.

Mr. Ryan: That possibility all emphasizes the fact, doesn't it, that you must not put any unnatural or excessive meaning upon the suggestion in that Latin American decision that Panagra ought to be allowed to apply for a route to the United States.

Mr. Highsaw: My position simply is that the parties have not carried out the Board's suggestion there and Panagra has not had an opportunity to apply for a route.

Mr. Ryan: And even if the Board had specifically said we think that from all the circumstances and all the facts before us now that Panagra should be extended to the United States, it still would not prevent this Board—should not prevent this Board—from taking a look at that problem at this stage, entirely free from any shackles that the Board might have put upon its own action in that respect.

Administrative bodies frequently say a thing by way of dictum—I take it that this was a dictum because it was unnecessary to the decision in the Latin American case—the Board frequently takes back—I wouldn't say frequently—but an administrative body frequently takes back dicta which it has written into the decisions, isn't that true?

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[fol. 3880] Mr. Highsaw: Legally your position is sound, Mr. Ryan. If the interpretation that you have just suggested were possible on the language in 525, that the Board would have to find some sort of change in the factual situation in order to justify itself.

I mean you have just suggested the possibility of a change in the factual situation in a period of seven months. I don't think the record in this case shows any change in the factual situation.

I think it is a problem that the Board has to face up to though and it has to explain away its language there in some way.

Maybe you can do it in the manner you have suggested, but somehow I think an opinion is going to have to be written by the Board explaining that away if it approves this agreement and I think that is the dilemma that this Board is in.

Mr. Ryan: Yes, but it isn't a dilemma that disturbs me because I am arguing for freedom to act in the public interest upon all the facts and upon the entire record in this case instead of regarding myself as hamstrung by what may have been—but what may have been a mistake in the dictum put in the Latin American opinion. I don't think that we are so infallible that we ought to perpetuate our own mistakes.

Mr. Highsaw: I agree with you, Mr. Ryan.

Chairman Landis: Are you suggesting that *stare decisis* applies to administrative tribunals?

Mr. Highsaw: No, I am not suggesting anything like that.

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[fol. 388i] This opinion was rendered a few short months ago and it is standing on the books and I think, as a matter of fact, when the public comes along and reads an opinion they are going to want some sort of explanation and I believe the Board is going to have to explain it.

I don't think it could approve this contract and write an opinion in which it ignored this language here. I agree that you may be able to find some explanation of it and to arrive at a different conclusion.

You can frankly say you are reversing yourselves. You can arrange that the factual situation has changed. I might argue along the lines suggested by Mr. Ryan but I think you are going to have to find some explanation.

Chairman Landis: I am a little worried by your approach, because your approach, looking at it as a whole would bring a sort of creeping paralysis over administra-

tive tribunals, saying that their policy judgments that they make one time, must remain whatever the scene is, whatever the change in personnel.

I can hardly see stare decisis applying to certain decisions in the policy field. These tribunals are supposed to be alive not dead.

Mr. Highsaw: I agree with you but in view of the very short time which has elapsed since this decision was rendered I don't think it is quite the same thing. There is nothing to keep the Board factually or legally or any other reason from completely reversing itself. I have two things I would like to bring out.

Chairman Landis: My only question was this, whether it

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[fol. 3882] it advisable to have a recess now or whether you can complete in about 15 minutes.

Mr. Branch: I will be through in about a minute. I have just one or two points I want to go at him now.

Mr. Schneider: Mr. Chairman, since I made the same argument yesterday, I wonder if I could be given the opportunity to reply to them.

Chairman Landis: I think not, Mr. Schneider.

Mr. Branch: Don't we want all the light we can get on it.

Chairman Landis: We have a certain amount of time.

Mr. Schneider: I wish I had the opportunity yesterday to answer that question because it is an interesting one.

Mr. Branch: I would like to know, Mr. Highsaw, what has happened since the Board's decision in the Latin American case providing for certain certificates down in that area, in making this suggestion, except that granting of the motion to reconsider certain points—what has happened that would probably change what the Board had in mind when it made its suggestion to the joint owners of Panagra?

Mr. Highsaw: Well, in addition to the suggestion that the chairman made about the reopening of 525, I think there have also been some facts that have occurred with respect to foreign competition there. I am not sure of my dates on it there. I know that the Peruvian National Airways have applied for a route from here to New York. There has been a route granted to TACA de Colombia.

Mr. Branch: All that was things that the Board could anticipate at the time. These things were going on with regard to the foreign permits and the Board knew they

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[fol. 3883] were going to grant some of them.

Mr. Highsaw: So far as the record goes, I know of nothing other than the reopening of 525.

Mr. Branch: I have forgotten just what the Board said now but my recollection is, as Mr. Ryan's is, up to a point, that when we examined the situation down South of the Canal Zone in South America, we came to the conclusion that perhaps competition down there wasn't justified at that time.

My recollection is that we were not so sure about the desirability of competition between the Canal Zone and the United States, and that this suggestion was made because, if competition wasn't needed all the way down at that time, if the potential traffic didn't seem to justify it, you might improve that through-service, which was then dead ending at the Canal Zone and still not be destructive in the competition.

I don't know how far we outlined that in the decision, I will say, but I wonder, and this is my question:

What reason would the Board have under the circumstances for making this suggestion in the language in the way it did. Was there anything pending in that case about the general abstract thing of letting people make applications in their own name?

Mr. Highsaw: I don't think so.

Mr. Branch: Isn't all the indication there that the Board had in mind that this might be a very desirable thing to do and wanted this carrier to apply so it could pass on it?

Mr. Highsaw: That is my interpretation of it, Mr.

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[fol. 3884] Branch, they were thinking of the possibility of extending Panagga. That seems to me a reasonable interpretation of the language.

Chairman Landis: Let's have a recess for a few minutes.

(Recess taken.)

Chairman Landis: Go ahead, Mr. Highsaw.

Mr. Highsaw: I believe that I made myself clear previously on this matter of stare decisis, but I would like to say just one other thing, to be sure that it is clear on that point.

I am not urging any rule of stare decisis here. I simply as counsel had to examine this contract to find out whether or not it was in the public interest and in so doing I found the words of the Board to be the most persuasive statements and other matters that had a bearing on that issue.

The other matters I want to take up is this contract being too indefinite and speculative. I don't urge this reason alone to be a reason for disapproval of this contract but I do think it should be considered along with the other points which I have raised.

I didn't intend in raising this question in my brief to cast any aspersions on the draftsmanship of Mr. Friendly. However, the fact is that only about two months elapsed from the date of the 525 opinion to the dates of execution of the agreement and because of such facts or otherwise, the Board is presented with a contract here which contains many broad general areas of agreement which are not precisely tied down, and others are the purest speculation.

Thus, in paragraph 2 the Board is asked to approve  
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[fol. 3885] extensions to certain points without knowing whether any such services can or ever will exist.

In paragraph 10, there is a request for approval of sales agency arrangements with no specific agreement of any kind before the Board. The same observation is applicable to paragraph 8, the training program, paragraph 13, the pooling agreement and paragraph 14, dealing with advertising and publicity agreements.

I do not believe it is in the public interest to approve loosely drawn arrangements of this nature, the importance and the effect of which will depend on how they are implemented by specific agreements entered into at some subsequent date.

This is especially true of paragraphs 8, 10, and 14 all of which are integral parts of the contract as claimed by

counsel and which will involve allocation of expenses between the parties in a manner now unknown to the Board.

It is clear from the record that there was no intent at the time the contract was drafted to submit many of these specific arrangements, when and if agreed upon, to the Board for approval. The theory advanced by the parties is that all such matters can be ironed out in mail rate proceedings.

I do not believe that this is an adequate protection of the public interest. The practical difficulties in the way of tracking down from an accounting standpoint all of the expenditures, especially in the face of numerous allocations based on judgment, and of disallowing large amounts, presents an undesirable situation.

I believe that it is better to have a clear understanding

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[fol. 3886<sup>1</sup> now of all that is involved rather than to attempt later to unravel a maze of intercompany accounting.

My last point with respect to contract "A" deals with the financial provisions. There, I wish to urge two things: first, that Pan American has no real control over the costs here, because it has no real control over the number of flights flown.

The number of flights that are flown may exceed what it would have put in between Miami and Balboa on its own account, and it has to reimburse Panagra for the expenses of those flights, both direct expenses and some indirect expenses.

Consequently, I believe that in that respect the contract is loose. Also the provisions of paragraph 17 and its annexes which deal with the financial provisions of the contract set up a procedure whereby Pan American has reimbursed Panagra for all direct costs incurred by Panagra in the operation north of Balboa and a reasonable proportion of such indirect costs as are fairly attributable to the operation.

These costs are to be allocated on the basis of provisions which take up some four printed pages of the contract. I would like to call the Board's attention to the second paragraph of paragraph No. 1 on page 21, which provides for allocation of flight costs, paragraph numbered "C" on page

22 which provides for allocation of training flight crews and other similar expenses and pages 23 and 24 of the contract which provide for the allocation of indirect expenses.

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[fol. 3887]. Chairman Landis: Your objection there is that they are too loosely drawn.

Mr. Highsaw: I have several objections to that which I am going to point out, Mr. Chairman,

Public Counsel believes it is adverse to the public interest that this agreement contain financial provisions based on a series of complicated cost allocations.

The proper supervisions of such allocations by the Board's staff for mail rate purposes is made exceedingly difficult.

The identification of costs of a carrier which are subject to prorating may become a mere matter of guess. This is especially true in this particular case because the fact that cost allocations here are based on vague terminology, such as major items properly allocable, New York expense, maintenance and communication departments, financial and accounting departments, personnel departments, all of which have meaning only with reference to the Panagra organization.

The difficulties involved in the allocations of costs are further multiplied in the case before us by the fact that Pan American has other contracts calling for allocations and Panagra has one other with Pan American.

As these allocation contracts pile up, less and less of the costs of the carrier are clearly distinguishable. The costs left over after all of the allocations represent a residue which has no real meaning as a reflection of costs of actual operations.

Moreover, allocations in this contract are based in large

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[fol. 3888] part on such variable elements that it is impossible for the Board to know at this time what the financial effect of the contract might be. What is the cost of the accounting department today, may be a cost of some other department tomorrow and a third department, the day after.

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This fact was admitted by Pan American. Thus insofar as such cost allocations are concerned, the Board would be giving the parties a blank check.

Finally, Pan American's accounting is already seriously delayed at the close of the year in part by reason of these inter-company allocation contracts. "As of" accounting should not be further encouraged by more allocation contracts.

The difficulty with the financial provisions of this contract may be traced to the same source as all of the other objectionable features.

This simply is not an interchange agreement to provide through service. It is merely a peg on which to hang a compromise between Pan American and Grace, and every part of it must contribute to that compromise.

With respect to the conditions of approval—

Chairman Landis: Before you go to that point, is it your position here that approval of this agreement means the approval of these cost allocations for rate purposes?

Mr. Highsaw: I think that it certainly would, Mr. Landis.

Chairman Landis: I should doubt that.

Mr. Highsaw: I believe that if the Board approves them under Section 412, that all the Board can look at is to determine whether or not the cost allocations have been accu-

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[fol. 3889] rately made under the contract, when it comes up in a mail rate proceeding, and my point here is the difficulty in making that determination, when and if it does come up in the mail rate proceeding.

Chairman Landis: I don't quite see that, that we would necessarily be estopped in a mail rate proceeding by having approved this contract. You say the formula used, to be approved in the contract, and employed for cost-allocation there, would bind us in a mail rate proceeding.

Mr. Highsaw: I believe, Mr. Chairman, that the finding that these cost allocations are in the public interest, in the operations of these carriers would have that effect.

Chairman Landis: There must be some type of cost allocation if you are going to approve a contract of this type.

Mr. Highsaw: That is one of my objections to this contract. This kind and type of contract which is drawn here, I agree with you that it does result in such cost allocations and that raises the difficulty which I—

Chairman Landis: Then if I get your point correctly, it is this: that contracts of this nature, so complicate corporate allocations that they are undesirable for that reason.

Mr. Highsaw: That is correct. I think these two companies here are treating themselves as one company for the purposes of accounting here, when actually they are two companies.

Mr. Ryan: Why couldn't we follow our customary plan there and put a condition there approving, if we should

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[fol. 3890] approve the contract—approving it and explaining that this is not to be interpreted as an approval of any particular cost allocation which may be involved in a future rate case.

Mr. Highsaw: Yes, I was going to suggest that Mr. Ryan and the conditions if the Board decides to approve the contract. I think that is subject to some difficulty, however, in that when you do get a mail rate proceedings you still have to check through the allocations that were made and see if they have been properly made on any basis either under the contract or some other basis which certainly raises tremendous supervisory problems when you get enough of these kinds of contracts.

Mr. Ryan: We are familiar with difficulties in the allocations process.

Mr. Highsaw: That is correct. That is the reason I thought it was quite important.

Chairman Landis: There are so many difficulties now that to complicate them a little further wouldn't hurt.

Mr. Highsaw: This might be the straw that breaks the camel's back. If the Board should decide that this contract should be approved Public Counsel believes that such approval should be conditioned upon the number of amendments to the contract.

In brief, to the Board, Public Counsel listed and discussed 14 such changes. The most important relates to

knocking from the contract those provisions where the parties have failed to present anything to the Board other than a general agreement.

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[fol. 3891] A precedent of approving such loosely drawn contracts should not be started. In addition, paragraph 9 which limits the passengers to be carried on Panagra flights to through traffic would appear to be in violation of the prohibitions against discrimination in Section 404(b) of the Act.

Finally, the financial provisions of the contract should be tightened, the terms of the contract should be cut to not more than seven years, the parties should be required to file with the Board revisions in the method of payment under the contract which the record shows they did not intend to file, and finally, the condition along the lines suggested by Mr. Ryan that the approval of this contract does not constitute approval of the formula for allocation therein should be inserted in the order of approval.

There is one other point I would like to bring up.

On page 39 of my brief, there were some figures relating to traffic and it was there stated that that traffic was between Miami and Balboa. Those figures which I gave should reflect from all three Pan American gateways to Balboa and I would like the record to be corrected to show that.

Chairman Landis: I think most of the intervenors have absorbed them there.

Do you want to take two minutes?

Mr. Schneider: I just wondered if I could.

Chairman Landis: Two minutes.

Mr. Schneider: That is right. I think I can do it.

#### REBUTTAL ARGUMENT OF HUBERT SCHNEIDER, BRANIFF AIRWAYS.

Mr. Schneider: I want to address myself solely to the

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[fol. 3892]

REBUTTAL ARGUMENT OF GERHARD A. GESELL  
PANAGRA.

Mr. Gesell: Mr. Friendly and I are going to divide the rebuttal time so I guess I have about ten minutes.

Chairman Landis: That is right.

Mr. Gesell: I am not going to try to tell the Board what it meant in the Latin American decision, but I think I can tell the Board, and Mr. Branch particularly, what the Latin American decision and subsequent events meant to Panagra.

I think perhaps the best way of doing that is to review more or less chronologically what happened.

When the Latin American decision was decided—came down—Mr. Roig did the very natural thing. He called a meeting of the Panagra Board and said, "I want authority to file an application."

That matter was not handled by the Panagra Board as a routine renewal of the old problem. There was a considerable interval of consideration. During that time Mr. Roig and other representatives of Grace called upon the various Pan American officials, the directors of Pan Corp as well as the Pan American, discussed the matter pro and con in great detail.

When the Panagra meeting was finally reconvened there was a flat refusal on the part of Pan American to approve the filing of an application. The Board had said that it wanted an application filed, everything possible had been done to bring that about, and it was clear that on the determination of every one in Pan American acting as a corporation, and these various people concerned with it,

[fol. 3893] acting individually, that that was impossible. There was then a counter proposal made by Pan American, and I was brought into the picture at that time.

I say brought into it—I have been working with Panagra and the Grace people on Panagra problems I guess for six years, constantly. I don't suppose a week has gone by that I haven't talked intimately about this matter with Mr. Roig and Mr. Garni and Mr. Patterson and the other Grace people.

I was very familiar with the background, very familiar with what Grace thought was best in the interests of Panagra and what Grace thought was best in the interests of the public. We started on this negotiation of the contract, Mr. Friendly and I, with absolutely no authority to conclude any kind of agreement.

Mr. Roig and his associates said, "I am not going to agree in principle to anything. I have had experience discussing various kinds of arrangements with Pan American. I am not going to do that. I am going to see what can be worked out and when it is worked out I will look at it, not before."

"I have no instructions as to what Grace was willing to do under this heading or that heading, and what Panagra was willing to do under this heading or that heading."

So, we went into these conferences and while it is true they took only two months, they were two of the most strenuous months that I have ever spent and I am sure two of the most strenuous months that any of us concerned with it have ever spent.

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[fol. 3894]. The Constitution, itself, was written in four months and while I don't say this is as important as the constitution, we worked on it and worked on it hard.

Chairman Landis: Perhaps they had better talent.

Mr. Gesell: Quite likely.

In the course of those negotiations and discussions, we recognized that the Board, itself, was opposing any extension of Panagra to the States through Docket 779.

Mr. Highsaw, who now points to that as a solution, had colleagues on the brief opposing it as a solution at the time.

We were confronted with another fact which occurred in the middle of the negotiations and which had a very vital effect on the negotiations, in my opinion, and that was the reopening of the Latin American case. We saw in the reopening of the Latin American case further evidence that the Board was not going to wait patiently again for something to happen in this Panagra situation.

We saw in it a very real possibility that Eastern Air Lines would be brought to the Canal.

We saw in it that if Eastern Air Lines was brought to the Canal there would be a totally different possibility for Panagra and Panagra's future.

The time factors were very acute.

The realistic and practical problem was to solve this matter at the time or we couldn't see the solution ahead. We saw it remotely, as a matter of litigation, over many years.

Competition was rising. It was a matter of doing something now, and doing it however on a basis which did not

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[fol. 3895] depart from what we thought the Board had in mind in terms of the public interest and what Grace and Panagra had thought were desirable in terms of the pattern.

You have heard arguments here that Grace succeeded in what it was trying to do. I don't think Grace succeeded. I don't think Pan American succeeded. I think what happened was that under the impetus of the Board's firm and forthright position we were able to work out an agreement that had never occurred to anyone before, an agreement that was totally different than we had ever discussed in our previous negotiations, something which I am sure those of us on the Panagra-Grace side could never conceive would have been possible.

The reason for that, as Mr. Roig testified: Panagra was in a strong bargaining position, a bargaining position strengthened by the action of this Board and by the events I have just related--the decision, itself, and the reopening of it.

We worked out an arrangement which Mr. Roig testified in this proceeding, that as best he would now be able to say had never been suggested to him in the past during this long and tortuous controversy, would have been unacceptable to Panagra. It was acceptable because while it may not have been an ideal solution in terms of an application, it was a solution which worked out for the public the advantages of the through service, which Mr. Roig and his associates in Panagra have been most concerned with, and it was a solution which was practical from a business point of view in terms of financial provisions, in terms of

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[fol. 3896] financial provisions, in terms of operating questions.

That was why the contract was entered into. It represented no departure from the position that Panagra and Grace had taken in this proceeding from the outset as far as ultimate objectives for the public interest are concerned.

Now, I am sure that when the Board referred to the filing of an application, it couldn't have given consideration to alternative methods.

No more than I at the time would have thought that an agreement like this was possible, could the Board have been saying in Docket 779 "We say you must file an application. We don't want to look or consider anything else."

This was something brought about by that decision and by the events, and something wholly outside anything any of us could have anticipated.

We want to submit it to you on the merits. We think your obligation is to determine whether or not this agreement is in the public interest, whether it meets the standards of the Act, and we present that problem for your consideration rather than the question of whether or not this meets or doesn't meet a particular mandate or a particular sentence of a particular opinion, written under other conditions than prevail at the present time.

We feel that the events have strengthened our position in urging an approval of the contract.

Now, I want to turn briefly to one other phase of the arguments that we have heard.

I am not going to try to discuss some of the questions of whether or not Panagra was conceived in sin, and some of

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[fol. 3897] the other arguments which I find it difficult to understand.

You know Panagra's history. You know that its organization and the manner in which it was organized was carefully reviewed at the time we undertook the pioneering job. Its performance we reviewed at page 11 of our reply brief.

We believe it is a good performance. I don't think the fact that we have settled a controversy here mitigated what we have done. I think it assisted it. Certainly public policy looks with favor on the discontinuance of controversies. I want to look at this problem of traffic because I don't think we have a clear understanding as between us and the

Board as to what Panagra's traffic situation is at the present time.

I want to first mention briefly the problem in South America. That has not been changed by this agreement. Panagra has its separate sales offices, it generates its traffic, the Buenos Aires office remains the same. Panagra has something better to sell under this agreement, but the traffic arrangements are essentially the same.

It is not a Pan American office at Buenos Aires, as Braniff would lead you to believe. It is a joint sales office. Panagra has its own personnel and sells its own tickets, an office as a matter of fact, which is run by a former Panagra employee.

In the United States the situation is changed and it is changed very favorably to Panagra. Panagra gets a far better and fairer break on this traffic matter than it had before. There has a lot of water gone over the dam since 779 and in that process advertising and publicity arrangements and schedule arrangements have been substantially

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[fol. 3898] improved and the connecting service problem greatly minimized since the days of that controversy.

Panagra was given its own advertising and publicity department, and much of that had already been accomplished by the time of this agreement, but this agreement goes further. It was worked out with recognition for the many problems which had arisen concerning Panagra's relations to Pan American as sales agent, what Pan American's responsibilities were, and what Pan American's obligations were.

We went painstakingly through all phases of that problem—advertising, publicity, and the generation of traffic—and worked out concrete specific provisions by which Pan American is bound and which we think clearly plays the whole arrangement on a much better basis—in fact on a basis with which we can't find any grounds for criticism.

We looked further ahead, even, and felt that we should put into the contract provisions which would enable us to discontinue the sales agent if it didn't work out, and those provisions are here. If it isn't satisfactory to Panagra in terms of its needs, if Pan American doesn't fulfill its obli-

gations, Pan American loses its sales agency under provisions of this contract. That gives Panagra the great leverage. It also gives it an opportunity to discontinue it entirely if our belief as to what is going to happen over the period of years doesn't work out.

Mr. Schneider has been kind enough to say that he would permit me to make a correction of the statement he made yesterday concerning Panagra's independent advertising, for example. I think I told you that Panagra had an inde-

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[fol. 3899] pendent advertising program and I think you, Mr. Branch, said you hadn't seen it.

The official Steamship and Airway Guide, for example, which I have here presents the thing in pretty clear shape and I would like to hand it up to you if I may.

You will see on the front side a system advertisement of Pan American Airways System, which mentions incidentally, Panagra points and gives Panagra traffic benefit but turn it over on the back and you will see a Panagra advertisement, resulting from the Panagra publicity, financed by Panagra funds, devoted exclusively to a development, and holding out of Panagra's traffic.

And you will find advertisements in Fortune such as this one in the current issue, a full page, wholly Panagra advertisement, and you will find advertisements in the New Yorker, and in Time, and in News Week and there is a big program going on in the New York papers. That is independent advertising undertaken by Panagra in the generation of its own traffic.

Mr. Lee: He gave you a good opportunity with that question, didn't he?

Mr. Gesell: Well, I cite it not to prove that Mr. Schneider was wrong, Mr. Lee.

Mr. Schneider: I was.

Mr. Gesell: But to give you concrete evidence that Panagra is in a position to generate and develop traffic in the United States, and it is not at the beck and whim of Pan American.

We call upon their agents, of whom they have a great many, over 250, we are in direct contact with them, with

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[fol. 3900] sales literature and we feel we are going to get a fair and good break in developing our traffic.

Mr. Branch: May I interrupt just to make this observation; that I have seen some of these advertisements and the thing that I realize now threw me off is the little note at the bottom which talks about "For full information and reservations apply to Pan American World Airways office," which are your agents, I suppose?

Mr. Gesell: That is right, they are our agents; Under that arrangement we have offices at 300 places throughout the country. 11 of those are Pan American offices but the rest of those are agency setups. They are not Pan American controlled. They are traffic people all around, in the hotel lobbies and everywhere. We are in direct contact with them through our own staff.

Mr. Branch: You have direct arrangements?

Mr. Gesell: Direct contact with them. Our people call on them. We present our literature to them, we haul them into conventions and show them motion pictures and give them speeches. We do all the activity in generating traffic with those agents as Braniff does with its agents or Eastern does with its agents or anyone else does. We have our own facilities for doing that, they are independent of Pan American, and that is perpetuated and preserved and broadened in this contract, and made in our opinion more effective.

Mr. Lee: I would like to ask a question on another point: Does this contract include the route to New Orleans?

Mr. Gesell: It does in this way: the contract provides

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[fol. 3901] that in the event Pan American obtains non-stop rights between Balboa and New Orleans, which it does not have at the present time due to the route situation requiring a stop at Guatemala City, that Panagra may operate its aircraft to Balboa and tender them to Pan American for Pan American operation over its route to New Orleans in the event that traffic conditions justify such an operation.

Mr. Lee: Any other access points in the United States included in this agreement?

Mr. Gesell: Yes. In the event Pan American gets certain additional route rights, then the agreement becomes

operative as to those route rights, principally—and of course most important to us—is the Miami-New York route which is involved in the domestic route case.

Mr. Lee: Is that automatic or is that operation on the part of Pan-American?

Mr. Gesell: It is automatic.

Mr. Lee: When they get, for example, non-stop routes from New Orleans to Balboa then it is automatic?

Mr. Gesell: The contract is automatic on the East Coast to New York. It depends upon traffic considerations when we talk about operations up through New Orleans to Chicago. In other words, it is automatic in the place where Panagra's traffic requires the service most.

The other is dependent upon traffic conditions, and we didn't want it automatic so far as Panagra is concerned, because we don't want our operation so fanned out here (indicating) that we don't carry through on the aircraft that Panagra tenders to Pan American, the traffic to its

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[fol. 3902] principal destination point, but it is automatic where it counts.

Mr. Ryan: And where it counts is on the East Coast, is that correct?

Mr. Gesell: Yes, I say where it counts in terms of where that is the most important place.

Chairman Landis: Before you leave, Mr. Gesell, I would like to ask you one general question on this agreement.

Has there ever been any suggestion made that this agreement would be a violation of the Sherman Act except for approval by the Board? Do you get my point on that?

Mr. Gesell: You are talking about the through flight agreement.

Chairman Landis: Yes, I am talking about the through flight agreement.

Let's assume, for example, that there was no approval required by the Civil Aeronautics Board of that agreement. Would you then violate the Sherman Act?

Mr. Gesell: I don't know the answer to that. That suggestion has not appeared in this proceeding.

Chairman Landis: It has not appeared?

Mr. Gesell: As far as I can recall, I don't think it has been suggested by anyone.

Chairman Landis: Of course our approval of the agreement gives you immunity from the Sherman Act.

Mr. Gesell: I think that the problem is difficult to resolve in terms of the Act, because of Panagra's peculiar relationships to Pan American.

Chairman Landis: I am not talking about the other [fol. 3903] phases of it but I am just talking about this agreement. —232—

Mr. Gesell: So far as I know that has not been suggested in the proceeding at all.

Chairman Landis: And the Department of Justice representatives were at the hearing and have had the opportunity to raise any objections?

Mr. Gesell: I think they made no statement, however, as to their view either way, as to the legality or illegality of that contract under the Sherman Act apart from approval here.

I will ask Mr. Friendly to check me on that.

Mr. Friendly: There was no such thing.

Mr. Gesell: I think that is the situation.

#### REBUTTAL ARGUMENT OF HENRY J. FRIENDLY, PAN AMERICAN AIRWAYS, INC.

Mr. Friendly: I would like, if I may, to begin by adding two points to Mr. Gesell's remarks in connection with Docket 525, with which I fully associate myself.

The first of these is that you have an opportunity in this case to bring Panagra's traffic, Panagra's planes, Panagra's crews, to the United States, and to do it now.

There is nothing to show that you ever had that opportunity, or would have had it, if an application by Panagra for a certificate had been made.

You have never heard argument, much less made a finding, that the traffic warrants the certification of Panagra on that route.

You have never heard argument on some of the legal questions—or let me put it, rather—questions specifically

[fol. 3904] related to the identity of Panagra, which would be brought up against its certification by some of the very

persons who now appear so enthusiastic about it, such as the argument that it would involve Pan American competing with itself, or the argument related to the half-ownership of Panagra by a steamship company.

You very properly, in 525, talked about an application by Panagra, though with no certainty as to what such an application would result in or would ever have resulted in on the merits.

Now, I think also that we ought not simply to take those words that you gentlemen used, but to try to get behind them to the reasoning behind them. Why was it that you were interested in an application being filed by Panagra.

Mr. Lee: Before you leave, you may have it, but comment, Mr. Friendly, on the legal point raised by Public Counsel that approval of an agreement like this might involve replacing a 401 case, at your most convenient point.

Mr. Friendly: I would be very glad to do it now, Mr. Lee.

We think there is simply no merit in that contention of public counsel. The motor carrier cases we believe are perfectly clear that one certificated carrier can make an arrangement whereby operations over its routes are conducted by the equipment and crews of another carrier without any problem of new certification being raised.

As we see it, the Board, in the Catalina case, went way beyond anything that is remotely suggested here.

There, United had made an agreement with Catalina, whereby not only the operations were to be conducted with

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[fol. 3905] United's planes and crews, but United was to establish the rates, collect the revenues, and the entire operation was to be for United's account.

That was approved under 412, with no suggestion that any 401 problem is raised. I don't think unless you want me to, that it is necessary for me to retrace the steps that were gone over by Mr. Giesell yesterday, showing how completely control of that operation north of the Canal is vested in Pan American and not in Panagra, except that I would like to comment on two points raised by Public Counsel, which I think may warrant a little comment.

First of all, he says that whereas in the ordinary interchange agreement the fixing of schedules is left completely with each party, here it is not.

Well, that seems to me a perfectly academic approach to the whole purpose of a through operation of equipment agreement, is that the equipment should go through and obviously there has to be some meeting of the minds as to the schedule.

No purpose would be served, take the United Western case. If a Western airplane had gotten into Denver at 12 in the morning and United had chosen not to run it out until 4 p.m., the whole purpose of the thing is that the plane shall go through, and this agreement provides that the parties shall adjust their schedules so that that shall be done.

That isn't giving Panagra any control over Pan American's schedules. The other point that was raised was that some control of the number of these flights was vested in Panagra.

Well, the answer to that is that it is vested only initially, and that the agreement contains provisions whereby

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(fol. 2006) if the load factors on these flights drop to a level that Pan American considers uneconomical, the matter has to be taken up and proper adjustment made.

Therefore, those, to my mind, are the only features of the agreement which raise even remotely a question of who is the carrier, or any 401 question.

I think they are completely without merit.

Chairman Landis: Isn't there a situation in Canada that is not unlike the Catalina case? Isn't a subsidiary of the Canadian Pacific operating across on one of those border routes under a permit issued to Trans Canada?

Mr. Friendly: I am just not familiar with that, Mr. Chairman. I think that there is no 401 problem whatever, that this agreement falls clearly within the I.C.C.'s action in the motor carrier cases, action which has behind it the sanction of the Supreme Court in the Thomson case, the Roseghboom case, and is a far smaller thing than you yourselves have approved in the Catalina case, which I would think disposed of the matter completely.

I wonder if I may get back to the language in 525. I think we must see what you gentlemen had in mind—try to speculate about it. I think that one thing that you had in mind was the very thing that this agreement does; getting through service between the Eastern United States and the West Coast of South America.

So, on that basis, Mr. Branch, when you inquire, quite properly, whether anything is changed, I think the answer is that this agreement is the change, and I think that we are entitled to inquire, as Mr. Gesell suggested, whether if this

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[fol. 3907] agreement, which nobody thought of, and it is very unfortunate that it hadn't been thought of, and we all can censor ourselves—I mean we, on this side of the table—that it hasn't been thought of before.

If that agreement had been on file on May 1 instead of on August 1, would that language have been as it was, and unless it would have been, I don't see that it is of any importance, unless the language was addressed not simply to the provision of through service, but to the provision of additional competition between Miami and Balboa, and between Pan American and Panagra, and if that is such an overmastering need that everything else is subordinate to it, why then of course as we said yesterday, this agreement falls, but we don't think that that is the case.

Mr. Lee: If this is approved, what other services, if any, does Pan American propose as between the Panama Canal Zone and Miami?

Mr. Friendly: This agreement, Mr. Lee, will only cover through flights operated from Lima or points south on Panagra's routes and Miami.

In addition to those flights we have the obligation, under our certificate, which we fully intend to discharge, to operate such flights between Miami and Balboa, terminating there as the needs of the traffic justify and require.

Some via Cimaguey and Kingston, some non stop, depending on what the traffic warrants.

Now, it seems to me that to say that because this agreement must fail, either on account of that statement in 525 or otherwise, competition between Pan American and Pan-

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[fol. 3908] agra on this Miami-Balboa sector is so vital for gets a great number of things.

In the first place it forgets the fact, as I mentioned yesterday, that 2(d) is only one part of Section 2. Section 2 puts other mandates on the Board, fosters sound economic conditions in air transportation, to improve the relations between air carriers, to coordinate transportation by air carriers, to promote adequate and economical and efficient service at reasonable charges.

All of those objectives at which this agreement is very definitely aimed.

In the second place, the arguments would seem to insist that these two companies compete with each other on that sector regardless of how much other competition there was, and in that connection, I would like to say a word about the idea that there is now no competition between Miami and Balboa, or between the Eastern United States and Balboa, which seems to be prevalent.

There already is competition between the Eastern United States and Balboa,—or there will be as soon as Braniff commences its operation.

Take the situation from New York, for example—the most important single source of traffic, although not the only one, as sometimes seems to be assumed.

From New York to Balboa there is going to be a service by National to Havana and thence by Braniff, which should be fully competitive with the service of Eastern and Pan American, or National and Pan American, through Miami.

There is already competition there. We are not all by

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[fol. 3909] ourselves.

Furthermore, I would like to come back to a point which I made before in other cases, that there is no evidence of traffic potential between Miami and Balboa justifying additional competition, whether by Panagra or anybody else.

You were shown some charts yesterday, pictographs, of the volume of traffic between Miami and the Canal, which is greater than the amount South of the Canal, but it is greater by comparison only.

Mr. Crozier's figures, which you cite in your opinion, were 36 outbound passengers a day to Balboa from all United States gateways, or less than 22 from Miami, and

to serve that traffic you already have the service of Pan American, the service of Braniff, and about six foreign carriers either authorized or about to be authorized, and what the need is for a 9th carrier in that—

Chairman Landis: But those foreign carriers can't take some of that traffic, can they?

Mr. Friendly: They cannot take traffic from the United States destined to this one little section here (indicating on map). They can take traffic from the United States to Panama, and they can take traffic from the United States to every other country there, and the idea that anything hinges on the Canal Zone versus Panama in the light of what are likely to be the changes in airport rules down there, does not seem to me in any way important.

Discount them if you will. Let's say that the six foreign carriers are only equal to three or two, because of fifth freedom or other limitations, where is the need for a fifth

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[fol. 3910] carrier, say, between the United States and Balboa when the other day you said that the question of having four unrestricted carriers between Chicago and Washington was a very speculative matter and you refused to approve it.

I do think that we must beware of this double standard—one for domestic and another for international, particularly now that you have established competition abroad.

When it comes to a question of additional competition there certainly is no reason for applying any different test.

Just a word on the arguments of Braniff and Eastern. Braniff very candidly did not make any claim that this agreement should be disapproved because of any injury to it. Its whole case is based on some claim that it was wrong of W. R. Grace and Company to seek this practical solution to the problem instead of pursuing litigation to the end, as if Braniff, forsooth, would heartily approve of an application by Panagra for a Balboa-Miami-New York route.

Well, we have simply been doing what Braniff told us to do. When they were seeking this route of theirs in South America, they said this: this is from page 46 of their brief to the Examiners:

"Such compétition" that is, by Braniff "would also compel Pan American and W. R. Grace and Company, out

of motives of self-interest, to cease their quarrelling and cooperate in the improvement of service between the United States and South America."

So, we followed the Braniff trail, and we regret that

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[fol. 3911] they now think they gave us poor advice.

Mr. Lee: At least that prediction came true, didn't it?

Mr. Friendly: Yes. That is, it did as far as we are concerned. Mr. Lee. There is only one thing lacking to make it complete.

Now, as to Eastern, the first thing that is clear is that so far as Eastern's present routes are concerned, the effect of this agreement can only be beneficial to it. Anything that puts traffic into Miami benefits Eastern, and this agreement will.

The claim that Eastern is prejudiced by the provision of this agreement relating to space assignments is a poor sham. Those are nothing more than the autonies which each airline assigns to its own stations, and which airlines assign to each other.

Panagra has precisely that kind of an arrangement today, not only with Pan American, but also with Eastern.

Reference was made to this Washington-Lima passenger whom Eastern gets.

Well, that is precisely the passenger we want—as you have pointed out, I think, Mr. Lee. That is the passenger for whom this kind of arrangement exists.

Now, if Eastern chooses instead to route him over Braniff-South of Balboa, we will handle him too—handle him on these through flights, on space other than the assigned space, or we will handle him on local flights.

In any event the situation would be exactly as it will be if this agreement doesn't exist.

Now, Eastern's motive isn't anything related to its ex-

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[fol. 3912] 3<sup>rd</sup>ing routes. It thought, as Mr. Gosey said, that it was about to profit from this disagreement between Pan American and Grace, and it is moving heaven and earth to prevent us from settling that disagreement. It is as discomfitted as a hawk that started to swallow a chicken and then found that the chicken was running off.

It doesn't pretend as Braniff does that it might like to help Panagra or see Panagra extended to the United States. It wants to keep Panagra just where it is, it wants to get to the Canal, itself, and then with its control of the preponderance of the United States originated traffic, not only from New York but from all of these other cities, reaching far into the territory which Braniff would have access to, it wants to be in a position to control the destiny of both Braniff and Panagra, and to do that until it felt the time had come for an advance from the beachhead, as Mr. Gambrell called the Canal Zone when he argued the Latin American case, unless, in the meanwhile, to use the phrase that he did yesterday, Panagra's owners had seen fit to disgorge.

Eastern isn't here to help Panagra or to help Braniff. It is trying to drive a wedge between Braniff and National, and it is trying to drive a wedge between Pan-American and Panagra.

I am not going to follow Mr. Gambrell in further rearguing the Latin American argument, except to say two things: First, to refer back to these traffic figures which I think show that a second operation—or another operation—between Miami and the Canal, in addition to all that have

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[fol. 3913] been now authorized, is simply not supportable, and in that connection, I would like to refer you gentlemen to the opinion which you wrote just the other day on reconsideration in the Pacific case, and to suggest that the course which you followed there is the course of statesmanship on the Miami-Balboa route also.

We share Eastern's views as to the desirability of giving the convenience of one carrier service to Latin American travelers proceeding through the Miami gateway, but we have a different method of providing that solution, one which will come before you in due course.

Now, if I could have another moment—I am sure I have already overrun my time and this will take about one minute—I would like to talk just a bit about the idea which has been generated by some of the intervenors that Pan-American has some generally adverse interest to Panagra, and

that we are not sincere in wanting to see this agreement approved and to see Panagra flourish.

The fact is that those two companies, in spite of this controversy about the extension matter, have worked in the closest cooperation as a glance at the map will show that they necessarily have to do. There seems to me to be two misgivings about Panagra's traffic. The first is that all of it goes to Buenos Aires. The fact of the matter is that as this record shows, of the United States originated or destined traffic, 82 per cent of the passengers are to and from points in South America other than Buenos Aires, points such as Quito, Lima, Santiago, where of course Pan

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[fol. 3914] American is 100 per cent interested.

Now, what about the other 18 per cent? Are they all from points for which Pan American's New York route or Miami route is competitive to Buenos Aires? Why, not at all. Take the fellow in Los Angeles, of whom there are quite a number. Is Pan American's salesman in Los Angeles interested in selling Panagra to Buenos Aires?

Well, of course, he is. Is the travel agent in Denver or New Orleans, whom we are working with—are they interested in selling Panagra's route? Well, of course they are.

And take even the part of this 18 per cent of the passengers who could go to Buenos Aires by one route as well as another? Do we regard them as completely lost to us if they travel over Panagra?

Well, of course not. We have the haul to the Canal. When they go over Panagra's route they are not going over the route of a stranger; they are going over one of our own companies. We have entered into a perfectly clear and definite contract to sell that traffic over those two routings—this traffic that is competitive, which is a small part of it—fairly and without discrimination, and we wouldn't have made that contract, and I wouldn't be presenting it here, if we didn't intend to live up to that promise fully. And apart from our sincerity and good faith in that, I suggest that our interest in getting an extra half share out of a portion of the haul on those few passengers, is not such that we are going to imperil a relationship that is as valuable as Pan American's with Panagra.

[fol. 3915]

## PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 420

Kahn/mh

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Docket No. 2423

In the Matter of an Agreement filed under section 412(a),  
and any other applicable provision of the Act, by and  
between

PAN AMERICAN AIRWAYS, Inc.  
and  
PAN AMERICAN-GRACE AIRWAYS, Inc.  
relating to interchange at Balboa

Room A, Departmental Auditorium  
Washington, D. C.  
Monday, October 7, 1946.

The above-entitled matter came on for hearing at 10  
o'clock a.m., pursuant to notice.

BEFORE:

THOMAS L. WRENN, and  
WARREN E. BAKER, Examiners.

APPEARANCES:

GERHARD A. GESELL, and  
CHAS. M. DAVISON, 701 Union Trust Building, appear-  
ing on behalf of Pan American Grace Airways, Inc.  
Chrysler Bldg., New York, New York.

FOWLER HAMILTON, Southern Building, Washington, D. C., appearing on behalf of Pan American Airways, Inc., 135 East 42nd Street, New York, New York.

HUBERT A. SCHNEIDER, 815-15th Street, Washington, D. C., appearing on behalf of Braniff Airways, Dallas, Texas.

EDWARD J. HICKEY, Jr., Special Asst. to Atty. General, U. S. Department of Justice, 10th and Constitution Avenue, Washington, D. C.

JAMES L. HIGHSAW, Jr., Public Counsel,

EDW. D. RAPIER, 315 Camp Street, New Orleans 12, La., Orleans Airport Commission, New Orleans, La.

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[fol. 3916]

RICHARD A. FITZGERALD, 1518 K Street, N.W., Washington, D. C., appearing for National Airlines, Inc., 3240 N.W. 27th Avenue, Miami, Florida.

WILBUR LA ROE,

JOHN MOORE, and

WM. BLUM, Jr., 743 Investment Building, Washington, D. C., appearing on behalf of Port of New York Authority, 111 Eighth Avenue, New York City, New York.

JOSEPH McDOWELL, Department of Justice Building, U. S. Department of Justice, Washington, D. C.

R. S. MAURER,

J. M. VERNER, and

T. M. MILLER, Municipal Airport, Memphis, Tennessee, appearing on behalf of Chicago & Southern Air Lines, Inc., Memphis, Tennessee.

E. SMYTHE GAMBRELL, and

W. GLENN HARLAN, 825 C & S Bank Building, Atlanta, Georgia, appearing on behalf of Eastern Air Lines.

ROGER J. WHITEFORD, appearing on behalf of Braniff Airways, Dallas, Texas.

ALEXANDER C. DICK, Appearing on behalf of Colonial Air Lines, Inc., 630 Fifth Avenue, New York City.

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[fol. 3917] PROCEEDINGS

Exam. Wrenn: Come to order please, gentlemen.

The Civil Aeronautics Board has assigned this time and place for hearing in the matter of an agreement between Pan American Airways, Inc. and Pan American-Grace Airways, Inc., dated July 30, 1946, being Docket No. 2423.

Will you please enter your appearances?

Pan American?

Mr. Hamilton: Fowler Hamilton.

Exam. Wrenn: Panagra?

Mr. Gesell: Gerhard A. Gesell and Charles M. Davison.

Exam. Wrenn: For Braniff?

Mr. Schneider: Hubert A. Schneider and Roger J. Whiteford.

Exam. Wrenn: Colonial?

Mr. Dick: Alexander C. Dick.

Exam. Wrenn: For Eastern?

Mr. Gambrell: E. Smythe Gambrell and W. Glen Harlan.

Exam. Wrenn: For National?

Mr. Fitzgerald: Richard A. Fitzgerald.

Exam. Wrenn: For Chicago and Southern?

(No response)

Exam. Wrenn: Department of Justice?

Mr. Hickey: Edward J. Hickey, Jr. and Joseph McDowell.

Exam. Wrenn: Public Counsel?

Mr. Highsaw: James L. Highsaw, Jr., Elison D. Smith, Jr.

Exam. Wrenn: Are there further appearances?

Mr. LaRoe: John W. Moore and Wilbur La Roe, Jr., for

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[fol. 3918] Port of New York Authority.

Exam. Wrenn: Appearing pursuant to a petition to intervene.

Are there further appearances?

Mr. Gesell: There was a gentleman from the New Orleans Authority who asked to have his name entered. He said he had spoken to you.

Exam. Wrenn: He had another hearing.

He intended to enter an appearance at the Waterman. I suppose that is where he is at this time.

#### COLLOQUY BETWEEN EXAMINERS AND COUNSEL

Before proceeding with the case of the applicants, are there any matters that should be considered at this time?

Mr. Hickey: Mr. Examiner?

Exam. Wrenn: Mr. Hickey?

Mr. Hickey: On behalf of the intervenor, Department of Justice, I would like to make a motion at this time that Pan American Corporation and W. R. Grace Lines be made parties to this proceeding. The Department is particularly interested in the control features exercised in the Panagra arrangements and it feels that these two parties are necessary to the proceeding.

We feel that that position is consistent with the position already taken by Public Counsel that both contracts are necessary to the proceeding.

We would like to urge at this time that an order be entered making them parties. It is my understanding that such an arrangement would not meet with serious resistance on the part of petitioning parties in view of the letter which has been written and made a part of this proceeding with

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{fol. 3919] respect to both contracts.

If desired by the Board the second contract can be made part of this proceeding and I presume it necessarily follows parties to that contract would also be.

Exam. Wrenn: I had a question I wanted to address to you but in view of your statement about the willingness of the parties I would like to hear from them first.

Mr. Hamilton: Speaking for Pan American, Mr. Examiner, I don't think that Mr. Hickey's statement is correct. We do take the position that Pan American is not a necessary party to this proceeding—Pan American Corporation.

The letter to which Mr. Hickey referred is the letter of August 27, and the third paragraph of that letter which

was evidently the one that he had in mind states that the contract was not formally filed under Section 412 or any other provision of the Act for the reason that we are of the opinion that there is not any provision requiring its filing, and that is still our position.

The letter proceeds, however, to say: "As stated at the pre-hearing conference, however, we considered that the Board in connection with its approval of the contract may attach such terms and conditions to it"—I am not reading the precise language, I am summarizing—"and that the conditions will relate not alone to that contract but to any undertakings involved in the contract between Grace and Co. and Pan American Airways."

As I say, that is still our position. It is our position that while the Board may quite properly consider in connection with the PAA Panagra contract, the contract be-

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[fol. 3920] tween Pan American Corporation and Grace, that contract has not been submitted to the Board for its approval.

We concede that it is closely related to the contract between Panagra and PAA. As to the question as to whether the Board should exercise jurisdiction, our position on that is as stated in the August 27 letter in which we said, "without waiving our position with regard to the statute not requiring the filing of the Pan American-Grace contract, we are authorized by the parties to state that if the Board should be of the opinion that the contract between them should be passed upon by reason of its relationship to the contract filed, the parties will not contest the Board's jurisdiction under the circumstances."

That is to say the Board's power to assert jurisdiction over the contract.

Exam. Wrenn: What would be the position if, after consideration of the evidence, the Board should determine that W. R. Grace and Pan American Corporation should be parties to the proceeding?

Mr. Hamilton: As far as Pan American is concerned I think it is our position that while the statute does not require them to seek approval of their contract with the Grace Corporation, that as stated in this letter it would not op-

pose the assertion by the Board of jurisdiction over the contract and over it as a party to the contract.

Exam. Wrenn: The point I am driving at is this: if the Board should determine that W. R. Grace and Pan American Corporation should be parties to this proceeding, would the fact that they are not parties be fatal—that is,

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[fol. 3921] to the agreement.

Mr. Hamilton: You mean, would the Board be deprived of jurisdiction to approve the Panagra PAA contract?

Exam. Wrenn: Yes.

Mr. Hamilton: If the Board should determine as a matter of law that they were necessary parties later on?

Exam. Wrenn: My point is this: If after considering all the evidence, the Board should reach the conclusion that W. R. Grace and Pan American Corporation should be parties to this proceeding, what would be the status of the proceeding?

Mr. Hamilton: I think under this letter it could make that determination, that they should be parties to the proceeding.

Mr. Hickey: Mr. Examiner?

Exam. Wrenn: Yes, Mr. Hickey.

Mr. Hickey: It is our position that the very receipt of evidence is dependent largely upon Pan American Corporation and W. R. Grace being parties to this proceeding.

We don't feel that it would be proper to make them parties after the receipt of evidence and we would like to urge that this matter be decided by the Board immediately.

It would be my suggestion that petitioning parties might be agreeable to having them designated as parties, with a view to speeding up the proceeding.

If that is not agreeable to them we would amend our motion to the effect that the hearing be deferred until they are made parties.

Exam. Wrenn: Would you determine that they are,

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[fol. 3922] proper parties until you have heard the evidence in this proceeding?

Mr. Hickey: We feel that the very receipt of evidence is dependent on their being made parties.

Exam. Wrenn: I am not convinced from what I have heard this far. Mr. Gesell, are you empowered to speak for W. R. Grace or not?

Mr. Gesell: I think I can state our position without talking for W. R. Grace at this moment. It seems to us that there are two separate issues here: One; whether or not the contract can be considered in this proceeding.

Now, everyone has said, including Grace and Pan American, that the contract can be considered if the Board determines by reason of its relationship to the contract filed, that it must be treated as all one ball of wax. That is a different question from whether or not Grace and Pan American have agreed to be here at this proceeding.

They have both agreed that the contract be considered and I should think the question of whether Grace or Pan American Corporation appear here is a matter purely up to them.

They are not necessary parties in the sense that they are parties subject to the jurisdiction of the Board. They are not air carriers. They are not for the Board here in that sense and since they have agreed that the contract can be considered on the basis indicated in the letter they naturally, would be bound by any letter which the Board issues in respect of the contract. Isn't that about where we stand?

Exam. Wrenn: I think so.

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[fol. 3923] Any other parties have anything to say on this?

Mr. Schneider: I would like to ask Mr. Gesell whether Mr. Roig and Mr. Friendly are going to be limited in cross examination to their representation of Panagra and Pan American Airways, Inc., and whether questions can be directed to them in their capacity as representatives of Grace and Pan American Corporation?

Mr. Gesell: I think it is perfectly clear that questions can be directed to them in any capacity as long as the questions are concerned with relevant issues. Certainly Mr. Roig isn't going to refuse to answer questions as to W. R. Grace and Co. which are relevant to this case, nor Mr. Friendly as to Pan American Corporation.

Mr. Gambrell, Mr. Examiner, I wish to concur in the request made by the Department of Justice for the reasons given by Mr. Hickey and for other reasons, and throwing light on the applicability of the law, Section 408 and 412, to W. R. Grace and Company and Pan American Corporation, I wish to quote what someone I sometimes regard as good authority, and that is Mr. Friendly in his memorandum, November 16, 1942 in Docket 779, page 11 of the memo where he said:

"It is of course immaterial that Grace's 50 per cent stock ownership of Pan American-Grace antedated the Civil Aeronautics Act. An air carrier controlled by a surface carrier before enactment of the Act can stand on no better ground than the surface carrier itself. Yet, that is the very case as to which the Board stated in the American Export decision that it would apply the

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[fol. 3924] test laid down in Section 408(b).

"Moreover, as previously pointed out, the inevitable result of the extension of Pan American-Grace's certificate to the United States would be an increase in the control exercised by Grace. Actually since the enactment of the Civil Aeronautics Act, Grace has already increased the degree of control exercised by it over Pan American-Grace without obtaining the approval of the Board, and on a state of facts in which such approval could not have been granted under the terms of Section 408(b)."

I have some other quotes from the opposite side, but there it is made plain that Grace is to be treated as an air carrier in relation to 408, and if Grace hadn't been regarded as an air carrier under the law, it seems to me that point wouldn't have been made in the memorandum.

Certainly W. R. Grace and Company is subject to 408 as an air carrier, or something substantially an air carrier under the law.

Now just a very short three-line quote from W. R. Grace and Company in its memo of November 16, 1942 in Docket No. 7. I quote from page 4 of the memo of Grace:

"If Section 408 were relevant, it would be necessary to determine whether Grace is a person comprehended by Section 408(a). The terms of Section 408(a) do not include Grace, (although they do include Pan American) and we cannot follow the argument that the last proviso of Section 408(b) modifies the clear language of 408(a) so as to include Grace within its [fol. 3925] terms."

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There Grace is saying that this applies to Pan American Corporation, which I assume Mr. Gesell today would not deny in view of previous commitments of Grace in that connection.

Now, if Pan American Corporation says it applies to Grace and Grace says it applies to Pan American Corporation, in a proceeding which we might call *ante litem motam*, then I say that should have weight here.

Now, one other short quote from Public Counsel in its memo of the same date—in their memo of November 16, 1942, in the same case, page 7:

"Mr. Warner: It must be recognized, of course, that the present case goes beyond the actual statement of the Board in the American Export case. That case involved the entry of a new company into the field whereas W. R. Grace and Company now have negative control of an established air carrier and will continue to have it regardless of the outcome of this proceeding. That case involved an application for a new route whereas the present case involves the extension of an existing route. The former case also involved an application, whereas the present proceeding involves a proceeding instituted by the Board on its own motion."

Exam. Wrenn: You are quoting there?

Mr. Gambrell: Yes. I am still quoting:

"It is submitted, however, that none of these elements constitute a reason for distinguishing the two cases.

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[fol. 3926] It remains true in both cases that unless the principles and tests of 408 are applied, it will be pos-

sible for a common carrier (or its parent) to obtain control over an airline operation which it did not previously control. Inasmuch as the Board has stated that it does not wish to approve any such acquisition without considering the tests of Section 408, these tests must be applied in the present case."

That is all the quoting I want to make just here but it seems plain to me that Pan American and Grace and Public Counsel have previously taken positions indicating that this hearing would be sadly incomplete as to facts.

Exam. Wrenn: What hearing?

Mr. Gambrell: I mean the present hearing, — by a knowledge without having those people who were regarded as so essential in the previous hearing, and the both documents, A and B in this particular case.

Exam. Wrenn: Suppose the things you have been quoting and tossing back and forth at each other were true. What is the situation now? How does it bear on this case?

Mr. Gambrell: It seems to me they did not regard these holdings as within the purview of 408 and it seems to me they each have taken contrary positions previously.

Exam. Wrenn: Are you addressing yourself exclusively to the question of jurisdiction now?

Mr. Gambrell: It is hard to separate it all. It seems to me that if these parties are probably essential it is fairer to them and to all concerned that they should be in now rather than later at which time they might claim that they

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[fol. 3927] have not had an opportunity to be confronted with evidence and to be bound by it.

Exam. Wrenn: On the strength of what I have heard here yet, speaking for myself I am unwilling to direct that these parties be brought in here when first they are contesting the jurisdiction and second they have said it has no bearing on it and have made a statement that if the Board determines it here they will consent to the jurisdiction.

Mr. Gambrell: Both of the parties and of the contracts, is that their position?

Exam. Wrenn: They speak for themselves. I don't put words in their mouth. I want to clear up your point.

Mr. Gesell: Our position is made clear in the letter of August 27, 1946 wherein Mr. Friendly and I spoke both for Pan American and Panagra and for Pan American Corporation and Grace, and in that stated that if the Board considered it had jurisdiction over this contract by reason of the relation of the Grace-Pan American Corporation contract to the one that has been filed no objection would be raised to the Board asserting that jurisdiction.

Mr. Gambrell: Could we go beyond that and inquire whether or not they would regard it as unseasonable making of them parties if it was felt that they ought to be parties, that this has been an injustice by waiting so long to bring them in.

I would like to know if they would make that point.

Mr. Gesell: I think it is perfectly clear from the letter that they have no basis for raising any objection to any order which the Board issues with respect to the contracts.

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[fol. 3928] Mr. Gambrell: Or making them parties either,

Mr. Gesell: That is clear.

Mr. Hamilton: I thought I had stated that position before, Mr. Examiner.

Mr. Hickey: Mr. Examiner, the bases on which the Department of Justice intervened in this proceeding were alleged restraints of trade and competition.

Now, I didn't labor this discussion purposely this morning for the reason that I felt it was perfectly obvious that with such an issue of public interest involved in the proceeding, it was obvious to all that the parties who exercise control of Panagra would have to be parties to the proceeding since it is only through such parties that any restraints of competition if they exist could be exercised and it is on that basis principally that we urge that Pan American Corporation and Grace Lines be made parties to this proceeding.

Mr. Gesell: Certainly Mr. Hickey doesn't mean Grace Lines. He has twice referred to Grace Lines.

Mr. Hickey: Grace and Company.

Mr. Gesell: W. R. Grace and Co.

Exam. Wrenn: Let me ask this question: In view of what has been said about Mr. Friendly and Mr. Roig being

here to answer questions, will that take care of your situation?

Mr. Hickey: I do not think it will.

Exam. Wrenn: Who can you get down here if you have W. R. Grace and Company? What information do you want that isn't available now?

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[fol. 3929] Mr. Hickey: Mr. Examiner, we feel that—

Exam. Wrenn: I am taking an undue amount of time to hear this but I want to get a full statement of the parties grounds here.

Mr. Hickey: Our full statement is that the parties who control this corporation, Panagra, necessarily are parties to this proceeding when the issue of restraint of competition is before the Board.

We have raised that issue by our petition for intervention, and that petition has been granted. We don't feel that the subsidiary corporation should bind the other corporation speaking at this hearing, even if it were conceded by petitioning parties that they could make certain statements regarding Grace and Company or Pan American Corporation.

Exam. Wrenn: I haven't heard from Public Counsel. Do you have any statement on it, Mr. Highsaw or not?

Mr. Highsaw: Mr. Examiner, as Mr. Gesell has said, there are two points involved here: one is the question of jurisdiction over the parties and the other is the question of jurisdiction over the contract.

With respect to the question of the Board's jurisdiction over the parties, Public Counsel wants to reserve the right to urge before the Board that the Board does have jurisdiction over the parties here, and that Grace is a carrier and that Pan American Corporation is an air carrier.

With respect to the contract that is involved, I believe, that public counsel's position was pretty well summed up at the pre-hearing conference and in the letter of Septem-

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[fol. 3930], her 3, 1946, in answer to Pan American and Panagra's letter of August 27.

There is just one point that I would like to try to get clear now and that is this question: Pan American and

Panagra have said that if the Board wants to take jurisdiction over the contract they are willing for the contract to be before the Board. However, the Board has no authority to issue an order saying that Grace and Pan American Corporation are parties before the Board unless they have filed an application for this contract to be considered, and it is Public Counsel's understanding of the letter of Pan American, set out on August 27, that if the Board should decide to take jurisdiction over this contract, that Pan American and Panagra and Grace and Pan American Corporation will all be considered as having applied under Section 412 of the Act and any other section that is applicable thereto.

I would like to get it clear that that is their position now.

Mr. Gesell: It must sound to some ear, Mr. Examiner, as though we are dancing a lot of angels on a pinpoint but we are not. There are two distinct questions:

Grace and Pan American Corporation, as I understand it, have no desire that the Board not fully consider the Grace-Pan American Corporation contract, and all the implications which that contract in relation to the other contract involves.

On the other hand to say that Grace and Pan American Corporation should come in and say, just because Mr. Gambrell would like us to say so that they are air carriers

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[fol. 3931] or that we are common carriers or that we are engaged in the phase of aeronautics, and we don't think we are, it seems to me to be putting the burden pretty heavy.

We have said that if the Board wishes to issue an order which involves that contract in any respect, it can, and naturally the parties will be affected by that Board and it will determine their relationship to this situation just as much as anything else but the idea of their coming in here as parties seems to us to be pretty beyond that, much beyond that, particularly when they have had notice of this hearing after all, officers of both companies are here, and I don't see why we have to labor time on the question of whether or not they are formal parties.

Exam. Wren: Does that answer your question, Mr. Highsaw?

Mr. Highsaw: No, it doesn't. I don't think that Mr. Gesell has yet stated what I understand to be the position stated in his letter of August 21 and as stated in my letter of September 3. There is some sort of twilight zone here or something where Grace and Pan American Corporation are.

If the Board takes jurisdiction over the contract it seems to me that the Pan American and Panagra and Grace and Corp. all have to agree that under those circumstances they will have applied to the Board.

Otherwise there is no way for that contract to get before the Board because under Section 412 of the Act you have to have an application by the air carrier, one air carrier that is involved, and a concurrence by all of the other air carrier parties thereto, so that I don't see how the contract

[fol. 3932] could get before the Board unless it would take the position that the Board, believing the contract is under the jurisdiction of the Board, that they would consider this application in this case to emanate from all the parties.

Exam. Wrenn: And if the contract couldn't get before the Board who would be damaged.

Mr. Highsaw: I believe it would be Pan American, Panagra, W. R. Grace and Pan American Corporation.

Exam. Wrenn: In other words, it couldn't be approved?

Mr. Highsaw: That is my present understanding.

Exam. Wrenn: Any further statement on that, Mr. Gesell?

Mr. Gesell: How would this be: if we stated that in that event we will have been deemed to have applied for purposes of this proceeding, because of the relationship of the contract to the contract filed, but that we are not waiving in any way our position that neither Grace nor Panagra Corporation are air carriers subject to the jurisdiction of the Act.

Exam. Wrenn: That is the way I understood your letter.

Mr. Gesell: I am trying to state it succinctly and I think that is what the letter says.

Mr. Schneider: The difficulty is: if at that time the Board says we have jurisdiction over the contract between Grace and Panagra Corporation obviously you can't pass

upon the contract unless the people who executed the contract are parties to a proceeding.

If the Board says you, at this time, become parties you have actually no record in which those parties participated.

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[fol. 3933] You have no record on which to pass upon the contract. I don't see what the objection is on the part of counsel for Grace and Pan American Corporation to being considered as parties now. They have already stated Mr. Roig and Mr. Friendly are available to testify for the two companies.

It seems to me they ought to cover the procedural defect that may take place months from now.

I would like to get this case decided and not go to court.

Exam. Wrenn: Mr. Highsaw is Mr. Gesell's additional statement clear in answer to your question?

Mr. Highsaw: That is one view that can be taken of it, Mr. Examiner, but in the event that the Board should decide that Pan American Corporation and W. R. Grace are an air carrier and a carrier respectively, it does clear up the situation.

Exam. Wrenn: Very well. Insofar as the motion, as addressed to me is concerned, it will be overruled.

Mr. Hickey: Do we have leave to file this motion with the Board, Mr. Examiner?

Exam. Wrenn: If you so desire.

Mr. Hickey: We so desire.

Exam. Wrenn: Then you better act fast on it.

Are there any other matters to be cleared up?

Mr. Dick: Mr. Examiner, I would like to make a statement at this time on behalf of Colonial Airlines and retire from the proceeding.

Exam. Wrenn: All right, sir. Go ahead.

Mr. Dick: The Colonial Airlines intervened in this pro-

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[fol. 3934] ceeding by reason of an interest which we thought no one else would protect, that interest arising from certain applications now pending before the Board, particularly on reconsideration by the Board of the decision in Docket 525.

Though the interest is real, it is to a certain extent contingent, I may say it is very much contingent. For that reason, we do not wish to participate in the proceeding and indulge the right of cross examination.

Also we are offering no evidence in the proceeding.

We do appear here, however, to protect our rights as intervenor, if that is necessary, to be allowed to file briefs, argue before the Board, and take any other part in the proceedings which we have a right to do.

We do not operate into Miami at this time. Pan American does not operate from Miami to interior domestic points. It seems to us that all exhibits and evidence offered to support any merged operations of Pan American's routes from Miami to points into the interior is irrelevant and immaterial, depending for its validity entirely on the supposition that Pan American's domestic routes case, hearing on which commences on October 30, will result in an award to Pan American of such domestic points as Washington, New York and Boston.

We would like to express at this time an objection to such evidence, but my understanding of the procedure is that if evidence is taken which is immaterial, the rights of the parties are protected without exception thereto.

Exam. Wrenn: That is right.

Mr. Dick: If, prior to the decision in this case, Colonial is awarded the Southern route to Balboa or to Barranquilla,

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[fol. 3935] we reserve, insofar as we can reserve by this notice, the right to demand that the proceeding be reopened if necessary for introduction of evidence bearing on the adverse effect which approval of this agreement would have on Colonial's route.

May I further call attention to the fact that Colonial has been a pioneer in offering to enter into equipment exchange agreements, and particularly to Exhibit A in Docket 525 in which the President of Colonial offered of record to enter into equipment exchange agreements with other carriers where the same would be practical, particularly the carriers of South American countries at any point of entry on the North coast.

Exam. Wrenn: Thank you, Mr. Dick.

[fol. 3936] Mr. Gambrell: May I ask him a question?

Examiner Wrenn: All right.

Mr. Gambrell: Not to labor the point, but to be sure I know where we are now in the parliamentary situation, may I inquire whether we are considering only Exhibit A or Exhibit A and B filed?

As I understand, we are considering only Exhibit A filed in the case at this time.

Examiner Wrenn: In what case?

Mr. Gambrell: The instant case. The application shows two contracts; A and B.

Examiner Wrenn: Are you referring to the statement Mr. Dick made?

Mr. Gambrell: Not at all.

Examiner Wrenn: That was the reason for my question. I thought you were referring to Mr. Dick's statement.

Mr. Gambrell: Is it correct to understand that only Exhibit A, Contract A, is being offered for approval at this time?

Examiner Wrenn: I will let the applicant speak on that.

Mr. Gambrell: He can say "yes" or "no".

Mr. Gesell: I would prefer to say something a little more than that, Mr. Gambrell. My answer to that is: We are considering both contracts. We said that at the present hearing conference. We said it in the letter of August 27. Our position is absolutely clear, that the Board can go into all of the issues raised by both contracts to the extent it feels necessary to approve the contract filed.

Examiner Wrenn: Do you mean, Mr. Gambrell, whether

[fol. 3937] or not the Examiner will restrict you from asking questions on the contract as filed between Grace and Pan American Corporation? If so, no.

Mr. Gambrell: We will treat them both alike in dealing with them here.

Examiner Wrenn: I will permit you to cross examine and consider both of them before the witnesses if that is what you mean.

Mr. Gambrell: I want to know which one they want to approve. I want to know if they want contract B approved in this proceeding. I think that is a fair question.

Examiner Wrenn: Doesn't the application state for itself? I don't want to argue with you, Mr. Gambrell. I don't think that is the Examiner's business.

Mr. Gambrell: They can say "yes" or "no" whether they want Contract B approved.

Mr. Gesell: We want the contract B approved if it is necessary for the approval of the contract filed.

Mr. Gambrell: May I ask who are parties to this proceeding, parties applicant or offering contracts? I know that Pan American, Inc. is.

Is Pan-American/Grace Airways, Inc. a party to this proceeding, and I would like for Mr. Gesell, if the Examiner will permit, the answer on that.

Mr. Gesell: I can't.

Examiner Wrenn: Isn't that shown by the order?

Mr. Gesell: We filed a letter and asked to be made a party, and I assume we are a party.

Mr. Gambrell: That is an easy answer.

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[fol. 3938] Mr. Gesell: The Examiner will have to answer the question.

Examiner Wrenn: For the purposes of this proceeding, the Examiner rules they are considered a party, if that will clear it up for you.

Mr. Gambrell: Is Pan-American Airways Corporation now a party to this proceeding?

Mr. Hamilton: If the Examiner please, I will be glad to restate the position that has been stated several times before, that Pan American Airways Corporation's position in that respect is stated in the letter of August 27, 1946.

Mr. Gambrell: A great deal has been said since. You can just state whether or not Pan American Airways Corporation is a party or whether—

Examiner Wrenn: Do you mean whether or not W. R. Grace and Pan American Corporation are parties to this proceeding?

Mr. Gambrell: I was asking each one separately, yes, sir.

Examiner Wrenn: Is that what you mean?

Mr. Gambrell: Yes.

Examiner Wrenn: I think we have had that argued here before, that they aren't.

Mr. Gambrell: Is that Mr. Gesell's understanding, of W. R. Grace and Company, that they are not now parties?

Mr. Gesell: I understand that Grace is not a party, whatever good that is.

Examiner Wrenn: Haven't we gone just about far enough into this matter now?

Mr. Hickey: Not quite. In order that the record may be

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[fol. 3939] perfectly clear, I would like to also make a motion that this hearing be suspended until the Board can make a ruling on my motion for making Pan American Corporation and W. R. Grace and Company parties to this proceeding.

Examiner Wrenn: The motion is overruled. Let's proceed. Mr. LaRoe?

Mr. Gambrell: Could I ask another question?

Examiner Wrenn: All right, Mr. Gambrell.

Mr. Gambrell: Are we to understand that counsel for the applicants and other counsel are agreed to the stipulation as to facts offered by Public Counsel?

Eastern is willing that that stipulation should be considered approved, and I would like to know if counsel for the applicants approve of that stipulation as to facts.

Examiner Wrenn: Mr. Highsaw, do you have anything to say about it?

Mr. Gambrell: Could I ask the counsel for the applicants whether they approve it or not?

Examiner Wrenn: I haven't seen the stipulation myself. I would like to know something further about it.

Mr. Highsaw: Mr. Examiner, I think it is important here to understand just what stipulation we are talking about.

Examiner Wrenn: I would think so.

Mr. Highsaw: In accordance with your instructions at the present hearing conference under date of September 5, I circulated a stipulation which contained nothing but the suggestions as to documents from Docket 779 that were to be included by stipulation, as they had been suggested to Public Counsel by the parties.

[fol. 3940] On September 27, Public Counsel circulated to all of the parties a second stipulation which included all of the material that was circulated in the first stipulation plus material which Public Counsel was including from Docket 525 and other material that ordinarily goes into stipulations in Board proceedings.

The Pan American and Panagra has informed Public Counsel that the inclusion of any documents from Docket 779 in the stipulation is not agreeable to those two parties.

They have also informed Public Counsel that the inclusion of some of the documents from Docket 525, which were circulated in the stipulation sent out on September 27, were not acceptable to those two parties.

They also made certain suggestions for additions to the stipulation. In accordance with those suggestions, Public Counsel has prepared a third stipulation which he has circulated to the attorneys here this morning, which includes all material that has been brought up in these various discussions, and excludes the material in Docket 779 and Docket 525 to which Pan American and Panagra would not agree.

Examiner Wrenn: I would like to request that counsel give consideration to this stipulation sometime during the morning.

Mr. Gambrell: May I note in passing, Mr. Examiner, that Eastern, on October 1, addressed a letter to Public Counsel suggesting further stipulation, and that we are willing to consolidate all that has been suggested by Public Counsel as a general stipulation?

[fol. 3941] Harold J. Roig, called as a witness, having been first duly sworn, examined and testified as follows:

Direct examination.

By Mr. Gesell:

Q. Mr. Roig, you have been President of Panagra since 1939, have you not?

A. Yes.

Q. And you are Vice Chairman of the Board of W. R. Grace and Co.?

A. Yes.

Q. Will you make a brief statement of the events leading to the signing of the contract which was before us in this proceeding from the date of the Board's decision in the Latin American route case?

A. The Board's decision in 525, the Latin American route case, was made public the latter part of May—I think May 24. It had a very direct and important impact on the problem which Panagra had been wrestling with for a number of years in that it not only authorized another American line, Braniff, to practically parallel our international route in South America, with the exception of Chile, but it also contained a very direct mandate that the owners of Panagra should take prompt steps to make it possible for Panagra to provide through service.

I immediately called a special meeting of the directors of Panagra to consider the proposal that Panagra apply to extend its route to the United States.

The meeting was called for within a few days after the

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[fol. 3942] notice and I think within a week of the publication of the decision in 525.

Pan American requested a slight adjournment of the meeting in order to make it possible to bring the matter before a meeting of their board of directors which was—I think it was a regular meeting, it was scheduled to come along within the next week or ten days.

I agreed to that adjournment and during the interval, in order that our situation, and what I considered the very important implications of 525, might be fully presented to

Pan American.

the directors of Panagra, I arranged a series of meetings

between Mr. Grace, Mr. Garney and myself, with Mr. Trippe and Mr. Dean, and with the outside directors of Pan American who were available.

I don't mean by that that Mr. Grace, Mr. Garney and I were present at all of those interviews, but that between us we saw these gentlemen to whom I have referred.

Mr. Grace and I, as I recall, personally, saw Mr. Charles Francis Adams in Boston. We went there especially for the purpose. I saw Admiral McDonald. I think Mr. Garney and Mr. Grace saw Mr. Sherman Fairchild. They also discussed the matter with Mr. Trippé and Mr. Dean.

I have forgotten the others whom I saw, but we have pretty well covered those who were available at the time.

Partly perhaps as a result of that, but undoubtedly the matter presented itself to Pan American also as an important decision to make, the matter when it came before the Pan-American Board of Directors, I am told, received very full and complete consideration.

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[fol. 3943] Our directors meeting was held a day or two after the Pan American meeting. At that time Mr. Dean and Mr. Friendly reported that the matter had very full consideration by Pan American's Board, and that they had reached the conclusion that they could still not support an application by Panagra.

They accordingly voted against a resolution which was offered at that meeting, and voted for by the Grace directors that Panagra extend to the United States.

On the other hand, Mr. Dean and Mr. Friendly explained to the meeting that their directors had indicated a strong desire to work out this matter in some other form if it were possible, and they suggested that they felt that something in the way of an alternate arrangement which would still comply with the sense of the Board's mandate in 525, could be worked out.

The Grace directors were not inclined to accept that just at face value, although we were impressed by the general manner in which the thing was presented as an indication of a disposition on Pan American's part, we felt to go a great deal further than they had ever been willing to go before.

I stated at the meeting that while ordinarily in a case of this kind, one would accept an idea in principle and then work out the details; I felt that in view of the experience that we had had in that matter, that we would

have to reverse that usual order of procedure, and that we could not accept the proposal in principle until we saw what it looked like in detail.

Accordingly, Mr. Friendly and Mr. Gesell were delegated to endeavor to work out some sort of an implementation of Pan American's proposal, which would be satisfactory

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[fol. 3944] to Panagra and which would be in compliance with the Board's mandate.

They spent the next two months in a really intensive effort to work out such agreements.

During that process of course Mr. Gesell was in contact with me and Mr. Friendly, I assume, with his clients, and there was no agreement in principle that we were going to execute anything—no such agreement on either side, until we were both satisfied.

As a result of the very arduous efforts that had been made by Mr. Friendly and Mr. Gesell, to effect the essential purposes which Panagra sought in this service—I will say there was no agreement until we saw what that actually looked like in black and white.

When that point was reached we held our Panagra meeting on the 30th of July and approved the contract and signed it.

Q. Did you state what the proposal of Pan American was at the meeting at which it was decided that Panagra would not file an application?

A. Do you mean the meeting when the resolution was offered and did not pass?

Q. Right.

A. Pan American's proposal at that time was that we endeavor to work out some plan. It was expressly stated that that plan was to be something totally different from the plan that we had discussed several years ago, and which I had found so unacceptable, but it was to be some plan which would make it possible in the first instance for the public to receive the benefit of through service, with one

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[fol. 3945] plane and without change, to destination in the United States, as the primary objective, and along with that would take care of the various points in which Panagra

was interested, and which had been the subject of some previous discussion.

Now, that was very very far at that moment from being spelled out in any such detail as it appears in these contracts. It was just a general concept of what might be done.

Q. You referred to the important implications of Docket 525. What do you have in mind in that connection?

A. Well, several things. It seemed to us that the award of a certificate to Braniff immediately changed the whole picture so far as American aviation in South America was concerned, because it meant that the character of Panagra's position was going to be somewhat changed in that we were going to have a direct American competitor in addition to all the local and foreign competition which was growing very rapidly, and that time was a matter of the greatest importance in accomplishing our idea of, in some manner or form, reaching a United States terminal.

Grace had won an important victory in the circuit court of appeals which had been taken to the Supreme Court. That proceeding might have worked out a satisfactory result over a period of almost endless years, but '525, the injection of Braniff into the picture, meant that prompt action was necessary unless we were going to have a fruitless result.

Q. Will you state what the considerations were which led you as President of Panagra and the Grace directors of Panagra, to be willing to enter into this agreement, in lieu of continuing efforts to have Panagra come to the

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[fol. 3946] United States on its own route?

A. Well, as I have just stated, the time factor was a very important consideration.

As I have also just stated, the fact that under this contract the public would have the benefit of through plane service was a dominant consideration, because that would put us in a position where we could compete with Braniff, and the foreign competitors who were having through services to the United States and would enable us to offer the public at least as good a service as they could offer.

In addition to that, and from the, in a sense, Panagra angle, but also in a sense the public angle too, because a

great many of these things involved large questions of aviation economics, which I think have more than just party to party significance, but the contract gave us several advantages, some immediate and others prospective, which we would not have had on our own certificate, and which we had to weigh against any loss from not having our own certificate.

In the first place, we attached a great deal of importance to the maintenance and training provisions which this contract provides.

Under the contract there are provisions by which we can maintain our equipment with Pan American in the United States—that is, they maintain it for us,—and we can do our pilot training in the United States.

With DC-4 equipment and even with other equipment,—particularly with DC-4 and other four-engine equipment—that is a matter of very great importance in reducing the cost not only the capital cost but the day to day expense.

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[fol. 3947] account, and we believe improving the efficiency.

The item of training alone where we have to send boys down south before we know how they are going to pan out, and then bring them back—the expense of that was a very very important item.

In addition to the maintenance and training provisions there was a plan worked out under which we could avail ourselves of the Pan American sales organization in the United States and all over the United States, in a far more efficient manner than we ever had been able to before.

Ample provisions for Panagra publicity, the right to use the Panagra name, provision for special employees charged with the responsibility of furthering Panagra sales, and

advertising provisions insuring a good ~~reputation~~ in the advertising.

Q. Did you feel that the agreement gave any greater assurance that Panagra's planes would be able to fly through to appropriate points in the United States?

A. Well, of course, that—I was coming to the points that were not immediately at hand.

The agreement contains provisions which enabled Panagra's planes to be operated by Pan American through to various points other than Miami in the United States if Pan American is awarded domestic routes, and we certainly felt that that was a facility to our traffic, of very great importance and the prospect of our securing it in this form was substantially greater than on our own.

Of course, also, implicit in some of the other points I have mentioned on the way by, there are provisions here

[fol. 3948] under which we felt that machinery was provided for disposal of such questions as had on some previous occasions led to misunderstandings and difficulty.

Q. Are you referring to provisions with respect to the powers of the President?

A. Yes, and I think not only the powers of the President but the general provisions about deadlocking, on all matters related to the contract and appropriate action related to seeing that Panagra is receiving what it is entitled to under the contract, the President without any voice of the Board is authorized to act, and that is a very important prerogative.

Q. You refer to savings under the heading of P and L, in terms of maintenance and training. Was any consideration given to the effect of those provisions on the capital account?

A. Well, of course, if Panagra had come through on our own certificate we would have had to provide all the capital necessary to provide the ground facilities, radio, and all that goes with setting up an air route which would have been a very substantial item.

It would even have included, I am afraid, shops because I think we would have had to provide shops to maintain four engine equipment in this country in any case.

Q. In discussing this matter you referred to the competitive situation and the need of speed in the face of competitive developments.

I wonder if you would turn to the exhibits, particularly Exhibit 4, and describe, perhaps illustrate, the nature of the competition which Panagra is now confronting or will

[fol. 3949] confront in the near future, with particular reference to the ability of the competitive carrier to operate a through flight between the United States and points on the West Coast of South America.

Well, of course, this exhibit speaks for itself as far as it goes.

I say as far as it goes, because it only shows the carriers who are presently in operation or authorized, but it doesn't show the ones that are just ready to be placed in that position, nor does it show all of the local competition.

It doesn't really emphasize the problem which confronts Panagra in maintaining an adequate traffic volume, and which I am afraid is not generally understood or appreciated.

The total population of all the cities served by Panagra in South America is about six million and a half, and of those three million and a half are in the single city of Buenos Aires.

There is no other city on our route with a population of a million and only two cities with a population of over 500,000.

Only three with a population of over a hundred thousand. The remaining 23 points which we serve have populations of under one hundred thousand and 20 of the 23 a population of under 30,000 each. To serve this total population of six million and a half Panagra must provide first class modern air service over a route 8800 miles long, as long or longer than the domestic routes of American, Eastern, United, or TWA.

Panagra must maintain its position over this long line through a thinly populated area in competition not only with another American Airline, Braniff, which has been

[fol. 3950] authorized to parallel practically our entire international route except in Chile but also in competition with 9 South American and European countries and various sections of our route.

Virtually every important city served by Panagra already has local or foreign competition.

Thus in Colombia we have competition of Avianca with recently authorized extension to the United States.

Between Balboa and Peru, Ecuador and Colombia, with extension to the United States, we have TACA, which also provides local competition in Colombia, Ecuador and Peru.

Locally in addition to TACA we have Andosa in Ecuador and Fafucett in Peru. In Bolivia we have LAB, in Chile, EAN, and between Chile and Argentine the British line already running, and LAN and FAMA just about to start.

All this competition exists today.

In near prospect we have in addition to Braniff a British line paralleling our whole international route with extension to New York.

Peruvian International Airlines and Tampa New Orleans and Tampico projected between Peru and New York.

FAMA the national Argentine Company paralleling our entire Argentine route and competing for Buenos Aires traffic with extensions to the United States at New York via the East Coast and Los Angeles via the West Coast.

On no airline in the United States serving anything remotely approaching a comparable population and comparable route mileage has competitive service been deemed justified.

Between Washington and Boston, for example, a distance [fol. 2951] of less than 500 miles there is a population within easy reach of the airlines in the area of about 25 to 30 million.

Boston, New York, Philadelphia alone account for almost 18 million, yet only one line, American Airlines, is authorized for unrestricted operation in this 500 mile sector.

A second line, Eastern, is restricted in its operation to Boston by the requirement it can only carry traffic to Boston on flights originating south of Richmond or West of Charleston, West Virginia.

A number of other lines enter the sector from other territory and carry traffic between some intermediate points, National between Philadelphia and New York, TWA between New York and Philadelphia, Penn Central between Baltimore and Washington, Northeast between

New York and Boston, and Colonial between Baltimore and Washington.

But only one line, American Airlines, is authorized for completely unrestricted service between these points, and a second line, Eastern, for restricted service.

On the basis of two American lines in Panagra's territory, there should be 8 to 10 lines with unrestricted operation between Washington and Boston.

Based on two American lines in Panagra's territory, plus eight foreign lines with extensions to the United States, all competing for through United States traffic between all or part of Panagra's territory and the United States there should, absurd as it may seem, be 30 to 40 unrestricted lines between Washington and Boston.

That is the difference between the standards under which Panagra is working and the standards which are recognized

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[fol. 3952] in this country.

By Mr. Gesell:

Q. I wonder if you could explain what effect that situation had on the need of Panagra operating the through flights as contemplated under this agreement?

A. Well, making any corrections or adjustments in these figures or in comparison, you please, the comparison can leave no doubt in any one's mind of the seriousness of the traffic problem confronting Panagra. It makes clear beyond any possibility of doubt two vital facts, first that Panagra must be put in position to obtain and develop its through traffic with the United States by through plane service as provided by these contracts.

With our local way to way traffic beset by constantly increasing competition from both local and international lines, our through United States traffic should not be imperiled by our being left in a position inferior to that of our American and foreign competitors.

In other words, we should be placed in position to at least compete on equal terms with our United States and foreign competitors for United States traffic by through plane service under these contracts.

The second implication, equally important, and a part of the same problem is that no other American Airline should be granted an extension to Balboa.

An extension of Eastern to Balboa, for example, would mean that it would make Balboa and not Miami the transfer point for Southbound South American traffic.

As the original carrier Eastern would have first contact

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[fol. 3593] with this traffic, thereby being able in large measure to influence the routing of the traffic from Balboa South.

If it divided this routing equally between all of the lines including Panagra, as it might be expected to do in order to receive reciprocal consideration northbound, it would mean it would automatically divert a large amount of Panagra's United States traffic, present and potential between Balboa and Buenos Aires, even after Panagra is enabled to offer through plane service to the United States under these contracts.

Through sale of round trip tickets Eastern would also be in a position to control the routing on much of the northbound traffic to Panagra's loss. Local traffic between Balboa and Miami already thin by reason of the services already operating between these points, is particularly necessary to supplement load factors on Panagra's planes between these points, to offset the fact that a substantial amount of the traffic Panagra brings to Balboa, forks off at that point to Central America, New Orleans, Brownsville, and Los Angeles, and the same of course applies in reverse on traffic in the opposite direction.

In other words, extension of another American line to Balboa would seriously impair the benefits Panagra would derive from through plane service under those contracts by diverting to competitive lines a large part of the United States traffic between Balboa and Buenos Aires which should normally and properly move over Panagra's route and by diverting from Panagra's planes focal traffic necessary to fill the places vacated at Balboa by Panagra traffic

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[fol. 3594] originating south of Balboa, and transferring there to Central America and to middle and western United States destinations.

Q. It is contemplated under the agreement, is it not, Mr. Rong, that Panagra planes operated by PAA north of Balboa, will carry local traffic between Balboa and Miami as well as the through international traffic?

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A. It is definitely so provided in the contract and provides that they will be given the same treatment as Pan American's own planes. The whole thing is just our plane, our physical plane, ~~fitted~~ into their operation, that is all fitted

there is to it. It is their operation. They have more of an interest in a sense than we have, because they are paying the expenses and benefiting from the receipts of the line.

Mr. Gesell: I think, Mr. Examiner, this would be a good place to adjourn. I don't think we will finish before the lunch hour. I have a number of specific questions concerning the contract which Public Counsel was anxious to straighten out. I think perhaps a breathing spell before that—

Exam. Wrenn: All right. We will adjourn until 2 o'clock p.m.

(Whereupon, at 12:30 o'clock p.m. the hearing was adjourned to 2 o'clock p.m. the same day.)

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[fol. 3955] Q. Now, I would like to take up with you a number of specific contract provisions in question which were raised by public counsel, in order to clarify the agreement under various headings.

The first relates to provision 2 (e) of the contract which states that Panagra aircraft chartered to the PAA are not to be operated over any of PAA's routes other than those described above, except by mutual consent.

Public counsel has referred to that provision as a blank check provision, permitting Panagra and PAA to proceed over—to put this agreement in operation over any of PAA's routes on a regularly scheduled basis without approval of the Board.

A. I can see that possible question, but actually it was intended for just the opposite purpose. The intention was that Panagra should not be in a position to ask that our planes be used on any other route, and Pan American should not be in a position to, and there is no intention of their ~~there~~ being operated on any except the routes referred to in the contract.

Q. If any regular operation over any other routes is undertaken, and it is thought to make this agreement applicable, the approval of the Board would first be sought. Is that correct?

A. Oh, yes.

Q. Now, I want to direct your attention to paragraph 2 (b) and (c) of the agreement which contain various provisions for Panagra planes proceeding over routes of PAA under various circumstances, but those routes are not as

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[fol. 3956] yet authorized by the Board.

Public counsel has asked—has raised the question as to the importance of those provisions in the agreement, and as to whether or not they should not be postponed for consideration until it appears whether or not Pan American is going to have the various routes.

Would you comment on that problem, please?

A. Well, of course, I think it is very important to the extent possible they should be covered in this proceeding, because they were an important inducement in the making of the contracts. They were an important element in the service, the public service which Panagra will be able to provide to its traffic if Pan American gets these routes.

Now, of course, the basic question, namely, whether there is any public convenience and necessity, which warrants the granting to Pan American of domestic routes, that is necessarily the subject of a separate proceeding.

But once that has been determined, why then whether it is contrary to the public interest for Pan American in performance of those services to use the physical aircraft of

at Panagra, which carries with it the very great, although quite incidental, I should think, from the legal angle, bene-

fit, of being able to give the traffic on Panagra's route through service, without change.

That is a question which I should think could be covered by this proceeding, and by this contract.

Q. Were these provisions of significance in the working out of the agreement?

A. Oh, very definitely.

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[fol. 3957] Q. The next question has to do with paragraph 8 of the contract which is the provision concerned with training.

Public counsel have raised the question as to whether detailed arrangements, worked out by the parties to implement that provision, will be submitted to the Board for prior approval.

A. Well, if there is any legal reason for it, or any considerations that makes it desirable, there is certainly no objection to filing it.

Q. With respect to paragraph 14 concerned with advertising and publicity, public counsel has inquired as to whether any arrangements made under that provision will involve the filing of contracts with the Board.

He apparently has in mind particularly the last sentence which says: "In this connection PAA and Panagra will work out from time to time appropriate programs for advertising the through service," and so forth, "and will establish the relative contributions to such advertising to be made by Panagra and PAA."

How did you contemplate that that would be handled, as a practical matter?

A. So far as the first part of that is concerned, the programs, I should think would be a routine business matter. It would not ordinarily come before the Board.

The question of division of expense is a matter in which the Board would be interested in connection with rate making in the mail rate determination, if for no other, and while that would be ordinarily worked out between the parties, I assume in the first instance it would automatically

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[fol. 3958] come before the Board, the first rate case that comes afterwards.

And if the matter were handled in a matter not satisfactory to the Board, it would be readjusted in determining the rate.

Q. With respect to paragraph 17, concerning the financial provisions, public counsel has directed attention to the provisions for arbitrating any question that arises between the parties concerning payment to be made in pursuance of the contract, and inquired as to whether or not the decision of the arbitrator, should that be necessary, would be considered by the parties as binding upon the Board.

What is your comment on that?

A. I think the same comment I made on the other point would be applicable here. We don't assume in any way to usurp any jurisdiction of the Board in this contract. Matters of that character would be within their jurisdiction, obviously.

Q. Your answer, then, would be the same as to any agreement reached by arbitration under paragraph 13, concerning further agreements.

If the arbitrator decided what the terms to such agreement would be, the agreement would still have to be filed with the Board for its approval before it became effective.

A. You would know the answer to that as a legal matter better than I would. But I should think so.

Q. There was no thought there that the arbitrator could determine independently the Board's requirements what the agreement should be under paragraph 13.

A. No.

[fol. 3959] Q. Public counsel has raised the question, which seems to me is answered by the wording of the paragraph, and I will try to cover it, in connection with paragraph 18 as to whether or not Pan American is prohibited for a period of 99 years, under the agreement, from seeking any modification of its certificate.

A. That section applies to modifications which would affect their ability to carry out their obligations under this contract; not to anything else.

Q. In other words, they are otherwise free to change their certificate any way they wish.

A. Oh, certainly.

Q. Now, the question has also been raised concerning paragraph 21, by public counsel, as to what the effect of the provisions concerning the term of the agreement are in the event of a future disapproval of the contract by the Board.

I take it the question is: Do these provisions prevent the Board from subsequently disapproving the contract?

A. As I understand it, the contract is legally subject to the present and continuing approval of the Board. And if approval it is not approved now, or at any time later, the ~~Board~~ is withdrawn; the contract is finished.

Q. Public counsel also raised the question whether the cancellation of the 1939 Pan American-Grace agreement has in any way affected the continued performance by Pan American and Grace of managerial and administrative services for Panagra.

What is the situation as to that?

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[fol. 3960] A. Well, those provisions of the 1939 agreement have been continued and will continue until the 1939 agreement is, by the approval of this contract, automatically come to an end.

Q. Is it contemplated that thereafter there will be any managerial agency services performed by the parent companies for Panagra?

A. Yes, on the basis to be arranged.

Q. Mr. Roig, when will Panagra be in a position to tender aircraft to Pan American for operation north of the Canal, assuming the agreement is approved?

A. The moment the Board approves it. We have the DC-4 aircraft now. We can put them into service at once.

Q. Are you prepared to do so?

A. Absolutely; anxious to.

Mr. Gesell: I guess those are all the questions I have.

Examiner Wrenn: Do you have any questions, Mr. Hamilton?

Mr. Hamilton: No, sir.

Examiner Wrenn: Mr. Schneider, you may cross-examine.

## Cross examination.

By Mr. Schneider:

Q. Mr. Roig, I believe you stated that this agreement arises out of the Latin American decision. Is that correct?

A. I said the Latin American decision was the matter that brought that was the occasion to bring this thing for prompt determination.

Q. Prior to the decision of the Board in the Latin Amer-

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[fol. 3961] mean case, you were not, were you, negotiating with Pan American with respect to any agreement such as this?

A. No. We were proceeding along the lines that you are familiar with.

Q. That is, the litigation now pending in the Supreme Court?

A. Yes. We had had a similar negotiation to this quite a number of years ago, back about 1941, or 1942, I think.

Q. But you were unable to arrive at a satisfactory solution.

A. That was the occasion when this so-called "interchange agreement" was submitted, which we did not find acceptable.

Q. You testified that after the Latin American decision, a meeting of the Board of Directors of Panagra was called which was subsequently adjourned at the request of Pan American directors, who later returned to the meeting of the Panagra Board and advised that Pan American could not go along with respect to the Panagra applying itself, as suggested in the Latin American decision.

A. That is right.

Q. What were the reasons for the Pan American's position?

A. There are several reasons. They felt and stated that they did not consider it in the interest of either Panagra or of Pan American. There were reasons under the former heading, the only ones that I was interested in, and they were that it would set up a violently and destructively

[fol. 3962] competitive situation in this area between Panagra and Pan American; that it would greatly weaken Panagra's ability to maintain itself in the face of the Braniff and foreign competition which was entering the picture; that it would require an extended investment in capital and operating expenses; it would require the setting up of a sales organization in the United States, and that it would in those ways and others generally deprive Panagra of the benefits which it had been originally contemplated, had always contemplated, should arise from the association of these two companies in certain respects.

Q. Those reasons break themselves down into two classifications, do they not, one set of reasons for the protection of Pan American and one set for the protection of Panagra?

A. Yes.

Q. Now, the reasons advanced for the protection of Pan American, were they any different from the reasons they have consistently advanced?

A. I don't recall any new argument.

Q. As far as the reasons assigned for the connection of Panagra, were those reasons any different from the ones previously advanced?

A. Well, they were necessarily different in the context, in which they presented themselves.

Q. What I mean is, the reason they advanced for Panagra not applying its own name, were they not substantially the same reasons they had consistently advanced?

But

A. No. Because you cannot tear the reasons apart from

[fol. 3963] the context, and the context on this occasion included the machinery under which we could bring our traffic through to the United States, and the context also included the fact that a new American competitor had been authorized in this area.

A reason that may mean one thing today may mean a totally different thing under another situation tomorrow.

Q. You assigned as one of the reasons given by the Pan American directors for not permitting Panagra to apply,

that it would cost a lot of money for Panagra to extend itself to the United States, if successful.

A. Yes.

Q. That reason has been advanced many times by Pan American.

A. Not in this context. I am not going to agree that this is a mathematical thing that you can slice like baloney. The fact of the matter is that on that very point it was quite one thing to incur that expense when you did not have Braniff in the field and when you did not have any other way of getting to the United States.

That was a totally different thing than when you had Braniff in the field and you had machinery under which you could bring your traffic to the United States.

in

Now, literally, and ~~in~~ the letters of the alphabet, it was the same, but the substance was entirely different.

Q. Did you agree with the reasons they assigned, the Panagra reasons? Did you think they had any validity?

A. I think that coupled with the alternative proposal, and with the change in the situation with Braniff in the

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[fol. 3964] picture, and the rise in foreign competition, they had validity which they are in a different kind, although you may say I did not think they had validity five years ago.

Q. But you wouldn't undertake to state today, would you, Mr. Roig, that you would prefer this kind of an arrangement to an arrangement which would permit Panagra to apply in its own name?

A. I would find very great difficulty in answering that question categorically because I went through that problem, that mental process, in great detail in deciding whether to come along with this contract.

Now, there are some provisions here that obviously I mean; there are some advantages obviously in connection with our own ~~contract~~ certificate. But there are also definite advantages here which do not exist with our own ~~contract~~ certificate.

And if this—myself, back in 1941 and 1942, as I said a moment ago, proposed some form of a contract settlement

of this problem. And if—it is always very difficult to say what you might have done in the past, but to the best of my lights

likes today, if we could have worked out anything like this at that time, I would have accepted it.

Q. Eliminating the time factor, that is, the length of time it might take to decide the pending litigation in the Supreme Court, the filing of an application before the Board, and satisfactory disposition, wouldn't you—I am asking you now as a representative of W. R. Grace—prefer to have Panagra instead of ~~ing~~ extended to the United States, ~~and so named~~, enter<sup>A</sup> into this 99-year contract?

A. I can't answer that yes or no. All I can say is that

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[fol. 3965] I weighed, and we all weighed all of the considerations on one side, and the other, and we decided on this course in preference to the other.

Q. Well, is it fair for me to say that you agreed to accept this as the next best substitute to that?

A. No. I wouldn't even agree to that. You can characterize it that way if you like, but it is—it was more than a substitute, because it had provisions in this that we would not have had under our own setup.

Q. Now, in your direct testimony you spent some time pointing out the competition to which Panagra is subjected in Latin America.

Isn't it a fact that all of this competition, except for the Braniff competition, existed before the Latin American decision?

A. No. That definitely is not the fact.

Q. How much new competition has come along since the Latin American decision?

A. I don't recall the exact dates when the Avianca and Taca, U. S. extensions were authorized. I don't recall the dates when Taca extended its operations to all points on the route. Some were before, and some after.

I do know that the British service between Santiago and Buenos Aires has just begun within the last few days. The line

know that the FAMA, the Argentine ~~thing~~, which is a very

serious competitor, that that is just taking shape in these days. It was in a quite confused state in the spring. I could, perhaps, if you like, go through all of them.

Q. No.

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[fol. 3966] A. That is a sample.

Q. Do you think that Panagra, W. R. Grace interests in Panagra, would have entered into this agreement with Pan American Airways, had Braniff Airways not been extended into South America over the Latin American routes in the Latin American decision?

Mr. Gesell: Isn't that an "iffy" question? I don't object to questions about the alternative difference between this and the route because I felt that the Board would be interested in that.

But the question of what they would have done if something had happened, or not happened, and trying to slice this so thin, taking so many different alternatives, which are not the facts, purely suppositions. The fact is, they had been authorized to get the route.

Mr. Schneider: In answer to Mr. Gesell, I am saying it arises directly out of direct testimony which, as I recall, is that the Latin American decision which put Braniff Airways over Panagra's routes in Latin America, brought these two parties together.

Now, what I want to know is would they have been forced together as a result of this FAMA business, BOAC, and so

forth, or is it all because of Braniff?

Examiner Wren: Let the witness answer. Go ahead, Mr. Roig.

The Witness: I think considerable light on that question exists in the fact I mentioned a moment ago, in another question, that as long as in the early '40's, we were trying to work out some sort of a contract settlement of this

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[fol. 3967] problem, and my feelings so far as I can recall it, with accuracy, is that had we been able to make this contract then, we would have taken it, and Braniff at that

time was not, as far as I know, even considering South American routes.

By Mr. Schneider:

Q. What I am getting at, Mr. Roig, is that, when all of us know, from previous records that you made many times to work out some arrangements something like this, but you were unsuccessful and it was not until the Latin American decision extending Braniff into South America?

Now, was it because Braniff went to South America that the two parties got together, or was it because of other things?

A. I think, as I said, the fact that Braniff got the route, and the fact that the Board had, in their opinion, virtually mandated Panagra to clear up the situation, combined to bring the thing to a head.

Q. Do you construe this agreement as meeting the desire of the Board, expressed in the Latin American case?

A. I do in substance, yes.

Q. Now, you referred several times to negotiations for an interchange of agreement with Pan American in years past. May I ask why this agreement is not a simple interchange agreement rather than a complicated character with many other rights beyond a simple interchange agreement?

A. You mean in comparison with the agreement we considered on the previous occasion?

Why

Q. What wasn't a simple interchange agreement entered

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[fol. 3968] into? Wouldn't that have solved this through service problem?

A. No, it would not, because a simple interchange agreement in the first place involves, as I understand it, involves reciprocal mileage. We would have operated our planes, or they would have been operated a thousand miles, to Miami

let us say, 1200 miles over Pan American's route to Lima, and Pan American planes would have been operated an equal distance, let us say, to Lima, over our route.

We never liked that kind of a setup, or thought it was a sound kind of a setup.

This contains no—this lacks the essentials, as I understand it, what is usually called "interchange agreement" in that respect. It is not an interchange agreement.

Q. The reciprocal point that you bring out merely arises from the desires of particular parties. There is nothing inherent in the interchange that calls for each party operating only the same mileage.

A. Unless I have forgotten my Latin, it is inherent in the word itself.

Q. Is there anything to prevent, by agreement, Pan American planes being flown by Panagra south of the Canal Zone over Panagra's entire system, and Panagra's planes being flown by Pan American north of the Canal Zone on their system?

A. There is absolutely nothing in the agreement on the subject, but it would be contrary, so far as I am concerned, to the position I have taken in the last ten years, and it would never be done except over my dead body.

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[fol:3969] Q. But that would provide through service.

A. But it would not provide the kind of through service we are talking about, and moreover, a simple interchange agreement would not have contained any of these other provisions on which have no relation to that thing, no matter what you call it.

Q. You are talking about pilot training, maintenance and so forth. They could be covered by other arrangements.

A. They could be, if the parties would agree.

Q. That is right, certainly.

A. But I have no reason to believe that Pan American would agree to those things, with respect to parts of total agreements, any more than we would agree to those things except as parts of total agreements.

Q. Would you refer to paragraph 1 of the agreement, Exhibit A? I see no reference in paragraph 2 (b) to Houston. Is that deliberate, the omission of Houston?

A. Well, I should say it was.

Q. And you do not include Houston, do you, in the description of points on the east coast of the United States?

A. No.

Mr. Gesell: You don't include Houston on the east coast of the United States?

Mr. Schneider: Paragraph 2 (b) has the clause: "Any other points on the east coast of the United States," and I asked him if he contemplates Houston as falling within that definition.

The Witness: No, I contemplate points from Florida north; not the Gulf.

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[fol. 3970] By Mr. Schneider:

Q. You said this paragraph 2 was an important inducement to you to enter into the contract. Is that correct?

A. That is correct.

Q. How would you feel about this contract if Pan American were unsuccessful in its domestic route case?

A. Well, I would feel that we had lost an important inducement, but not one which we made a basis of determination if they did fail.

Q. Well, if Pan American is not successful in its domestic route case being extended north of Miami to New York, and this contract were in existence, you still would not have through plane service to the West Coast from South American to New York, would you?

A. No, but we would to the United States. Miami is a port of entry, after all.

Q. You mean it all links on terminating on a point in the United States, or does it hinge upon the number of connections that are involved?

Mr. Gesell: What hinges? I don't understand that question.

Mr. Schneider: The import of this contract. I will put it another way.

Is the important thing from your standpoint about this agreement the fact that you can get access to a point in the continental limits of the United States, or that it provides the least number of connections in service between South America and the United States?

The Witness: The basic point is that we get to a base

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[fol. 3971] in the United States.

Now, the secondary point is that the more we can fan out in the United States, obviously the better. But getting to the United States in itself is the first thing.

By Mr. Schneider:

Q. Now, throughout this agreement I see the phrase: "operated by Pan American," or, "Pan American operations," and yet I notice throughout that they are to be Panagra's planes flown by Panagra crews, and manned by Panagra cabin attendants.

What do you mean by "operated by Pan American," except, perhaps, that it flies over Pan American certificated routes?

A. Well, and for their account, which is a very important thing. After all, it is the difference between, you might say, a time charter, or bare boat charter, to use a steamship comparison, or the lease of an apartment house with janitor service, or without it.

There are many situations where you can lease a unit with certain human operating facilities that go with it, can

You lease a farm that way.

Q. But in the normal sense of the word as we use it in this business, Pan American will do no operating of the aircraft.

A. Oh, they do all the operating of the aircraft as a commercial unit. The engineer on the locomotive doesn't operate the train. He gets his instructions from the people who are operating the line.

Panagra

Q. I take it then that the ~~Pan American~~ pilots flying

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[fol. 3972] Panagra ships north of the Canal Zone are subject to the direction by Pan American.

A. Certainly.

Q. Panagra pilots?

Mr. Gesell: The contract so provides, expressly.

The Witness: Yes.

By Mr. Schneider:

Q. Now, turn to paragraph 10 (b). I notice in the last few lines of paragraph 10 (b) the words "Panagra shall cooperate with Pan American." I notice no agreement on the part of Pan American to cooperate with Panagra.

Is that because of the previous history of the cooperation with Pan American?

a reasonable

A. No, it is not. That is not ~~the reason of a~~ question based on the statement of the contract, either.

Q. Why does it read that Panagra shall cooperate with Pan American—

A. Read the whole paragraph.

Q. Let me ask the question, please.

Why is it that if Pan American fails to do something, Panagra agrees to cooperate to straighten it out? Why doesn't Pan American agree to straighten it out?

A. I think in most cases they do. I want to read this paragraph a moment.

Well, it would seem to me, it may not be too aptly worded, but it would seem to me that the import of that language was that Pan American would establish adequate disciplinary machinery for preventing any further conduct of the type indicated, and that Panagra would cooperate

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[fol. 3973] in the form of suggestions to what that might be, or going along with what might be worked out.

Q. It is the only last thing that is spelled out, that Panagra would cooperate.

A. No, the last thing spelled out is the "establishment by the latter," which is Pan American, "of adequate disciplinary machinery."

Q. Is there any agreement there on the part of Pan American to either cooperate, or to establish adequate disciplinary machinery? Is there anything more in 10 (b) than an agreement on the part of Panagra to cooperate in helping Pan American establish disciplinary procedures?

A. Well, you can—the words are there. You can argue one way or another. It is perfectly true, however, that in other provisions of the contract there are general provisions that on this whole question of the kind of sales service which Pan American gives to Panagra, if Panagra is not satisfied with it, there are very adequate provisions under which they can make their desires felt, resulting finally in arbitration and ultimately, if it does not come through, in termination of the ~~contract~~ sales agency.

So, I would not consider any quibble over that language of any significance.

Q. We have a 1939 agreement before us now, Exhibit 29, and that had in paragraph 4 thereof quite detailed provisions to resolve disputes between the two parties, ending up in arbitration.

Now, was arbitration ever used on the 1939 agreement to settle your difficulties?

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[fol. 3974] A. No.

Q. Do you contemplate that it would be used under this agreement if you had differences?

A. Yes.

Q. Why?

A. Well, because the differences which are—for which arbitration is provided under this agreement are, I think, pretty generally—there might be one or two exceptions—arbitration of matters of administration, matters of operations, matters of sales administration, matters which are pretty readily susceptible of arbitration.

The only question that ever arose here where there was any question about arbitration—

Mr. Gesell: When you say "here"—

The Witness: Under the 1939 agreement—was a question of quite a different character, which we did not think was a proper subject of arbitration under that contract, there was a difference of opinion on it.

But we did not think it was intended to be included in this arbitration clause, and it certainly was a question of doubt how you are going to arbitrate, because it in-

volved all kinds of questions of policy of extending an air line.

By Mr. Schneider:

Q. Now, turn to paragraph 13, please.

With which party did this provision originate? Grace? Pan American?

Mr. Gesell: Which part of 13 are you talking about, Mr. Schneider, please?

Mr. Schneider: 13 (a). Sorry.

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[fol. 3975] The Witness: What was the question?

(Question was read by the reporter.)

The Witness: I think it originated with Grace. It has been discussed at various times over a good many years, but in connection with this particular contract, I think we brought it up.

By Mr. Schneider:

Q. Assuming this agreement is approved, why wouldn't you be willing to compete with Pan American for traffic from the United States to Buenos Aires on an open competitive basis?

The Witness: Will you read the question?

(Question was read by the reporter.)

The Witness: Why wouldn't we be willing?

By Mr. Schneider:

Q. Yes.

A. Well, obviously from Balboa north, the approval of this agreement would make any competition impossible. From Balboa south and for the Buenos Aires traffic, and I suppose your question is related to the pool, we would certainly spare no effort to get all the traffic that we possibly could off our planes.

Pooling agreement, contrary to what is sometimes thought, do not have by any means a complete strangling effect on competition.

Q. Do you mean, Mr. Roig, that if this agreement is approved, that you would be—

Mr. Gesell: What agreement?

Mr. Schneider: Exhibit A.

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[fol. 3976] Mr. Gesell: We have two agreements. I am not trying to interrupt. I thought Mr. Roig thought you were talking about the pooling agreement, and you were talking about the other.

Mr. Schneider: Yes. An agreement is an agreement.

By Mr. Schneider:

Q. If the agreement in Exhibit A is approved, do I understand your testimony to be that you would then be at a competitive disadvantage with Pan American for traffic between the United States and Buenos Aires, and that that competitive disadvantage could only be cured by entering into the agreement contemplated in 13 (a)?

A. No. That would not be the purpose of the agreement on 13 (a).

Mr. Schneider: Off the record.

(Discussion off the record.)

Mr. Schneider: I would like to have the last answer read.

(Answer was read by the reporter.)

By Mr. Schneider:

Q. You say the approval of this agreement, Exhibit A, would make competition impossible between Balboa and the United States.

A. No.

Q. Were you talking about Exhibit A when you answered that question?

A. Yes. That was Exhibit A.

Mr. Schneider: I am not talking about competition between Balboa and the United States. I am talking about

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[fol. 3977] competition in traffic between Buenos Aires and the United States.

The Witness: I thought you were talking about my answer, which expressly was limited from Balboa to Miami. I was taking it in sectors.

By Mr. Schneider:

Q. All of 13 (a) relates to the United States to Buenos Aires traffic.

A. Yes.

Q. It is not broken down. So we are only talking about traffic from the United States to Buenos Aires.

A. Yes.

Q. Now, to what extent will the approval of Exhibit A, the overall agreement, improve your competitive situation; that is, the Pan American for traffic between the United States and Buenos Aires?

A. I think the approval of Exhibit A would put us in an equality with Pan American on traffic between the United States and Buenos Aires with the exception that while Pan American is coming to New York, and we are in Miami, Pan American will have some definite advantages—

Q. We will then—

A. —which will not be obviated unless and until we can—

Q. The competitive advantage being that they are first in New York.

A. Yes.

Q. Is there any competitive advantage in the mileage basis, they being in New York?

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{fol. 3978} A. No. I think that would be in our favor, probably.

Q. Well, then, whereas they have the New York entry on their side, you have the mileage perhaps on your side; is that correct?

A. But not a great amount of mileage.

Q. Why aren't you willing to compete with Pan American on an even basis for all traffic from the United States to Buenos Aires?

A. I would rather compete with Braniff, and some of these outsiders.

Q. Why?

A. Because we have to maintain our position, and we can cooperate with somebody. When you have about ten other competitors on your back, you certainly improve your position to someone, and the fellow you can cooperate with the best is the fellow who can give you the most in the way of reciprocal facilities.

Q. I still don't understand why you have to add 13 (a) —superimpose an agreement pursuant to 13 (a) on top of this agreement, to protect yourself competitively with Pan Américan, for Buenos Aires traffic.

A. I don't know that we have to do it. We haven't yet done it, and if we do, the agreement has to come before the Board for approval, and I suppose all of those points will be relevant at that time.

Q. That leads to my next question.

Is an agreement under Section 13 (a) a "must" under Exhibit A? I mean, is it the heart of Exhibit A?

A. Well, it can't be the heart of it, because all it says is

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[fol. 3979] that they will negotiate with the objective of entering into an agreement. There is no—

Q. And if they don't agree, they don't agree.

A. If they don't agree, they don't agree. Or, if they do agree and the Board doesn't approve, it doesn't count.

Q. Now, under paragraph 17 (e), page 15—17 (e) on page 15. Do you have it?

A. I have it.

Mr. Gesell: That is an accounting question. Mr. Schneider, I don't want to suggest that you not question Mr. Roig. We will have accounting witnesses here for details of that sort.

Mr. Schneider: That is all right. I will withdraw any questions I have. I would rather have an accountant answer it.

I have no further questions.

Examiner Wrenn: Mr. Gambrell? Mr. Gambrell, you may examine the witness.

By Mr. Gambrell:

Q. Let us look at the beginning of the petition, if you have it.

A. I have it.

Q. Paragraph 3. You say: "A substantial amount of the business between the continental United States and Canal Zone originates at or is destined to points on Panagra's routes in South America.

Do you know, off hand, what percentage it is, dollar-wise?

A. I think the exhibits show that, and I think it is about  
[fol. 3980] 51 per cent, isn't it?

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Mr. Gesell: Exhibit 7 covers that, Mr. Gambrell.

By Mr. Gambrell:

Q. Paragraph 4, you speak of various foreign flag and other American flag carriers that are about to begin operations between continental United States and countries in South America where Panagra is certificated.

You use the plural on "American flag carriers." Will you tell what American flag carriers are being certificated in what we may call Panagra territory, or have been?

A. Well, Braniff, of course, is definitely.

Q. What other?

A. The other American lines which have been certificated to South America are not physically in Panagra's territory, but some of them may come to points which would have a bearing on Panagra business.

Q. Are you willing to modify that language and say that there is one carrier, one American flag carrier, only, and that is Braniff, that is threatening to operate in your territory?

Mr. Gesell: You asked a moment ago—

The Witness: Eastern is anxious to go to Balboa.

By Mr. Gambrell:

Q. Eastern is anxious to go to Balboa? I move that that question be stricken. There is no application of Eastern pending.

Examiner Wrenn: You move that the question be stricken. All right, I will strike the question.

Mr. Gambrell: I said the answer.

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[fol. 3981] Examiner Wrenn: I understood you to say the question.

Mr. Gambrell: I move that the answer be stricken because he has no authority to make any such statement as that.

Mr. Gesell: We are glad to hear that the application is withdrawn.

must have been

The Witness: The application was withdrawn very recently.

Mr. Gambrell: I asked a simple question, Mr. Examiner. We can make time if we can get a simple answer out of this, without wisecracking.

Examiner Wrenn: The answer may stand. Proceed.

Mr. Gambrell: Does the Examiner overrule my objection to Mr. Roig's answering that Eastern has tried to get Balboa?

Examiner Wrenn: I understood you to move that the answer be stricken, and I overruled the objection, Mr. Gambrell.

By Mr. Gambrell:

Q. Do you know of any company that is at this time about to begin operations in the Panagra territory outside of Braniff Airlines; any American flag company?

The Witness: Will you repeat the question?

(The question was read by the reporter.)

The Witness: Well, I am not sure that I quite understand the question, Mr. Gambrell, because that is not what we were talking about in "4". That is, not what "4" says, "4" says between the continental United States and countries of South America, which Panagra serves.

Now, that is a different thing from operation within the

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[fol. 3982] territory which Panagra serves.

By Mr. Gambrell:

Q. Well, I am asking you if you know of any besides Braniff that is about to begin operations in the territory that you directly serve.

A. If by "in" you mean between two points on our route, the answer is no. I do not.

Q. Do you know of any American flag carrier at all which is about to begin operations between the eastern half of the United States, that is, east of the Mississippi, and the Braniff—the Panagra territory?

Examiner Wrenn: Isn't that a repetition of the previous question, Mr. Gambrell?

Mr. Gambrell: No, sir.

Mr. Gesell: I suppose he wants us to say that Braniff isn't applying for a route to New York, yet.

Mr. Gambrell: I think the witness is capable.

Examiner Wrenn: You may answer the question, Mr. Roig.

The Witness: Well, the only certificated route to Balboa, up to now, is, I think, the Braniff route.

By Mr. Gambrell:

Q. I asked a simple question.

The Witness: Just read the question.

Examiner Wrenn: I would like to know what the argument is.

The Witness: I am asked to recall from memory a very complicated situation. I have to feel my way a little bit.

Mr. Gambrell: Certain statements are made here. I want to narrow the presentation of them.

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[fol. 3983] Examiner Wrenn: The point I have to make is you have to have the Board's decision to say whether they are or not.

Mr. Gambrell: We have to lay some premises, Mr. Examiner, to ask some other questions.

Examiner Wrenn: Go ahead.

The Witness: What is the question?

By Mr. Gambrell:

Q. Do you know of any other flag carrier that is about to commence operations between the eastern half of the United States, that is, east of the Mississippi, and Balboa, or points south on Panagra's route, American flag carrier?

A. I would consider the hookup between National and Braniff such an application.

Q. One company, I say; any single company going through. Do you know of any such carrier?

A. Braniff.

Q. That is west of the Mississippi.

A. Yes.

Q. I am asking east of the Mississippi.

A. Except through the National connection, no.

Q. Do you agree with the Board's statement in Docket 779 in its original order to the effect that the bulk of the traffic in relation to the Panagra territory originates or is destined to that portion of the United States east of the Mississippi?

A. Yes.

Q. If that be so, is it your contention in this proceeding that Panagra and Pan American need some strengthening in order to compete with the presently authorized service

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[fol. 3984] between this country and Latin America?

A. I think Panagra does, very definitely. I am not speaking for Pan American.

Q. You feel that the Braniff authorization which is the only direct authorization into your territory, and which swings west to Texas and points north, is a serious menace to your system; Is that right?

Mr. Gesell: Mr. Examiner, it isn't the only authorization. Mr. Gambrell has jumped from pinning Mr. Roig down about U. S. carriers to saying now it is the only authorization. He knows it is not the only authorization. There are other authorizations which are foreign authorizations, and I don't like that kind of tricky question.

By Mr. Gambrell:

Q. The only American flag authorization. You spoke a while ago that Braniff coming in had changed the picture very seriously.

A. Yes.

Q. I would like for you to analyze the economic seriousness of Braniff's threat on your system, considering how it is carrying into the United States west of the Mississippi.

A. I refuse to look at it in that narrow way. I look at it in conjunction with the hookup with National.

Q. Is it your thought that it is easier for National to make a hookup in Havana than it is for you and Pan American to make a hookup in Balboa?

A. It is easier!

Q. Yes.

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[fol. 3985] Is it an easier thing to accomplish, hookup between National and Braniff in Havana than it is between Pan American and Panagra in Balboa?

A. Well, of course the Pan American hookup in Balboa up to now is only to Miami.

Q. Is there anything—

A. There are certain difficulties. Of course they both have involved the difficulty of a connecting service. No question about that.

Q. Is there anything inherently different between the two transfers that we are speaking of now, as far as facility is concerned?

A. I should say that Havana was an easier place for a hookup than Balboa for a great many reasons. In the first place, Balboa is in the Canal Zone, and in recent times, during the war, it has had very many complications connected with the transfer at Balboa.

Also, it is further from destination. By "destination" I mean the United States, and that presents some difficulties.

I think the hotel problem is easier, much easier than it is in Balboa. I haven't considered the thing.

Q. Would you say that a transfer between American carriers can be better handled in a foreign country than

it would be between American carriers in an American territory like the Canal Zone?

A. No, I don't say that. Whether it is foreign, or domestic presents another series of questions.

Q. You were speaking a while ago about not having any

[fol. 3986] Pan American service north of Florida, as perhaps a factor in the economic situation.

I show you a press release of Pan American Airways, dated June 27, 1946, regarding the New York-San Juan service starting July 1, 1946.

I call your attention to the second paragraph as well as the others, reading as follows:

"Connecting at San Juan with established Pan American routes to all parts of Latin America. The link will afford direct air service from New York to all the 37 countries and Colonies of South and Central America and the West Indies served by Pan American's 50,000 mile network of Latin American trade routes."

You can look at it all, if you like.

Do you accept the representation of that press release that Pan American now does have direct air service from New York to San Juan to all the 37 countries and Colonies of South and Central America and the West Indies, served by Pan American's 50,000 mile network?

A. Well, they do in the sense it is described here, with a connection at San Juan.

Q. It says: "Direct air service from New York to all 37."

A. That means direct carrier.

Q. It says direct service from New York to all of them.

A. It is direct carrier. It is the same carrier.

Q. Wouldn't that mean direct service?

A. I don't know. I didn't write it.

Q. --all the way from New York to Panama and the

[fol. 3987] west coast of South America?

A. I don't know what it was intended to mean. It speaks for itself. It is the English language.

Q. Are you familiar with the nonstop procedures that have been adopted by Pan American in the last two or three months in relation to Puerto Rico and other Caribbean points?

A. I am not familiar with it.

Q. How did you happen upon the 99-year term as a proper term on this contract?

A. Well, there was no magic in it. It is a figure that is sometimes used to ~~mean~~ a long term, virtually perpetual contract.

Q. In other words, that may well be regarded as a permanent arrangement between Pan American and its subsidiary, and by the two holding companies. Is that right?

A. That is correct. Subject to any subsequent action by the Board.

Q. Is it your thought that if the Board approves this the Board is not bound by any approval?

A. Oh, no. I consider the Board bound by their approval, but I also consider that under various sections of the Act the Board can always move into these situations anew in the light of new circumstances and new facts.

Q. If there are no new facts, would you consider that the Board if it had approved this would bind itself for the 99 years?

A. Well, I don't understand the use of the word "bind" as related to a Governmental agency which is not enter-

[fol. 3988] ing into a contract. It is not bound in that sense. It is not bound in the sense that the parties are bound.

Q. If no new fact enters into a situation, would you—is it your thought that the Board should not be in position, say a year from now, to revoke its approval?

A. I don't know what the law on that is, Mr. Gambrell. Whatever it is, that is what the power of the Board will be.

Examiner Wrenn: How do your questions tie up with Section 412 (b), Mr. Gambrell?

By Mr. Gambrell:

Q. On top of page 2 of the application, that is, paragraph 6, you speak of—

Mr. Gesell: I would like to have an answer to the Examiner's question. Didn't you ask a question? I was interested in the same question.

Mr. Gambrell: Pardon me. I did not hear the question. I beg your pardon.

Examiner Wrenn: I assume it will be developed on brief. Go ahead.

By Mr. Gambrell:

Q. Looking at paragraph 6, of the application, which speaks of long term arrangement through plane service between points on Panagra's system and points on Pan American's routes in the United States, I would like to ask if it is your position that Panagra's United States routes are peculiarly—

Mr. Gesell: Are what?

By Mr. Gambrell:

Q. —are peculiarly appropriate for interchange, or char-

[fol. 3989] ter arrangements as distinguished from the routes of other U. S. carriers in relation to this country.

I meant Pan American's route, Pan American's domestic—Pan American's United States' routes.

Maybe I should ask it over.

Do you regard Pan American's United States certificates as peculiarly suited to Panagra interline arrangements; that is, interchange of equipment, as distinguished from other routes of other carriers?

A. Well, as related to this particular kind of contact, which you call interchange, I don't call it that—I would say yes, because at the present time Pan American is the only route certified between Balboa and Miami.

Braniff is certified for a different route and we could hardly be expected to make such agreement with Braniff.

anyhow in view of the fact that they are out competitor on every inch of the international route.

Q. Do you regard Pan American in South America as a competitor of Panagra?

A. In a certain very definite sense, yes, but in other senses, like Braniff, no. I mean, they are not competing with us for every point along our route the way Braniff is. The competition is from Buenos Aires.

Q. If some other U. S. flag carrier should be certificated south from Florida to the Canal Zone, would you regard the possibility of Eastern or National asyñudeal with Pan American for such an interchange arrangement as you have?

A. I think I would cross that bridge when I came to it. It depends on a great many things. There are a great

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[fol. 3990] many things that Eastern or National would be—would not be in a position to provide that are provided by this contract.

Q. Is it your thought that Panagra, being a subsidiary of the Pan American system, is a reason in favor of interchange, or is it one objection to interchange?

A. Pan American Grace is not a subsidiary of Pan American. It is an affiliated company. It is not a subsidiary.

Q. You mean the 50 per cent—

A. Yes. But I consider that the stock relationship is a reason for cooperation, yes, I do.

Q. In other words, if Pan American were a stranger to Panagra, you would think there was less reason for this than there is where Pan American owns 50 per cent of Panagra.

A. I think so.

Q. Will you explain why?

A. Well—

Examiner Wrenn: What are you getting at?

Mr. Gambrell: I am getting at whether or not it is a wholesome arrangement.

Mr. Gesell: That is not a Pure Food and Drug hearing.

Examiner Wrenn: Do you want the question, Mr. Roig?

The Witness: Yes.

(The question was read by the reporter.)

The Witness: Well, for one reason, there is some community of interest Pan American has in Panagra that an outsider would not have.

Another reason which covers a lot of territory. I don't want to seem frivolous, but after all we have worked with Pan American for a great many years, and while the going

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[fol. 3991] has not always been satisfactory, we have gone along, built up a big business. We know each other. Sometimes, the devil you know is better than the one you don't.

By Mr. Gambrell:

Q. If Eastern were in the Canal Zone, if it should be granted its Latin American application to the Canal Zone, would Panagra be willing to enter into an interchange with Eastern?

Examiner Wrenn: That, does it have any bearing on this, Mr. Gambrell?

Mr. Schneider: I am interested to have him answer that question, Mr. Examiner, to find out whether the agreement is in the public interest; whether it is for the public, or whether it is an accommodation of two parties here combined to do something which they wouldn't do with anyone else.

By Mr. Gambrell:

Q. If Eastern should get to the Canal Zone, would Panagra in your opinion be willing to join up with them on an interchange arrangement?

Mr. Gesell: What do you feel about that, Mr. Examiner? Is that a proper question in this proceeding?

Examiner Wrenn: I don't know. I am waiting to hear the answer to see.

The Witness: Wouldn't that divide itself into two situations, if Eastern got to Balboa and this agreement were approved, so that Panagra was getting to Miami in this

in

for a, or at least our traffic were getting there ~~to~~ this Port?

Examiner Wrenn: Let him answer. Go ahead.

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[fol. 3992] The Witness: If you assume that, why then, of course, there would be an element of competition which would have to be considered before entering into an agreement with Eastern.

And I have also felt and testified in 525 that I felt Eastern's going to Balboa might be the first step toward coming on further south, and that would have to be weighed, but if this contract were not approved, and we had no arrangement with Pan American, and it were possible to make such an arrangement with Eastern, mind you, I say, if it were possible, if Eastern were disposed to agree to all things that Pan American has agreed to, I wouldn't say I wouldn't look at it. I would have to consider it in the light of the circumstances at that moment.

I have been very much preoccupied in the last two or three months in trying to make an arrangement with Pan American. I haven't had much time to think what I might do in various eventualities.

But I am determined that Panagra shall get to the United States, or its traffic rather shall get to the United States in some form or another. I hope it will be in this form.

By Mr. Gambrell:

Q. If this route through the Canal Zone should be approved as proposed here, into the New York area, would it not be that there would be two Pan American system routes dominating the entire eastern half of the United States in relation to Latin America all the way to Buenos Aires?

Examiner Wrenn: Let us confine the situation, if we can, to the existing situation we have before us. You are

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[fol. 3993] conditioning that on another case.

Mr. Gambrell: That was brought up this morning. It is put into their maps. If they will be ruled out, then I won't go further.

Examiner Wrenn: I think we will deal better with the situation as we have it here, Mr. Gambrell.

Mr. Giesell: Mr. Examiner, I am inclined to side with Mr. Gambrell in this instance. We are seeking permission of the Board to operate over routes which we trust will be awarded to the Pan American in the near future, and I should think it would be an appropriate question on what the situation is, that will develop in the event Panagra can proceed over those routes.

Examiner Wiener: I have no question of going into the eventualities, but I do wish you would stick with the situation.

If this upsetting up with the Pan American domestic route case, maybe we are in the wrong hearing.

Mr. Schneider: Mr. Examiner, if you will recall the statement I made at the preceding conference, if you go through these exhibits of Pan American, it is hard to find one that stops at Miami and doesn't go through to New York.

Mr. Gambrell: Exhibit 1, Mr. Examiner.

Examiner Wiener: Go ahead.

By Mr. Gambrell:

Q. Isn't the layout of Pan American's Exhibit 1 in contemplation of the establishment of new single plane service between New York and Buenos Aires via Miami and Palma on the part of Panagra and Pan American running via

[fol. 2994] finally parallel to the existing through service now operated by Pan American between New York and Puerto Rico, Buenos Aires? Isn't it in effect a proposed parallel, all within the Pan American system?

A. I don't see that it is, Mr. Gambrell, because the Puerto Rico New York service has no connection with any point on the West Coast of South America except Buenos Aires.

Q. You don't take any stock in that press release of Pan American of recent date where they said that it went direct from New York to every one of the 37 Latin American countries, through Puerto Rico?

A. Oh, I don't think it makes any difference whether I do or not. That is their way of stating it. The facts are clear from the statement.

Mr. Giesell: Let him answer the question, please. He is in the middle of an answer.

Mr. Gambrell: Very well.

The Witness: The statement is clear what it says. You can quarrel over the inference.

By Mr. Gambrell:

Q. Is it your thought in saying that the fact that you are half owned by Pan American is a reason why you should have this arrangement with Pan American rather than another American carrier? Is that because you think that the two main routes from New York to Buenos Aires and intermediate points should both be in the same system?

A. No, I should think that was just incidental, even if true. I don't consider it true in view of the fact that

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[fol. 3995] I have just mentioned that the West Coast is in no way benefitted by this—or served by this route from Puerto Rico.

Q. Would there be any competition between this projected charter operation on the Balboa-Miami segment and what you could call the normal Pan American operations on the Balboa-Miami segment?

Would there be any competition between those two operations if you could distinguish them from each other?

A. There is no competition between Balboa and Miami because the Panagra plane merely fits into the Pan American schedules as one of the units on their operation.

Q. You recognize that as far as one company's service goes now, American flag service, Pan American Airways has a monopoly between Miami and Balboa, do you not?

A. No. That is not true.

Q. What other single company, American flag operator, operates all the way?

A. There are none that run at this moment straight between Miami and Balboa, but there are plenty of connections between Miami and Havana. You can get Braniff.

Q. I was not asking for that.

A. No, but I was making it clear because that is part of the picture.

Q. I asked for a single carrier—

Examiner Wrenn: Do you mean that you have a monopoly if you have single carrier service?

Mr. Gambrell: I didn't catch the observation.

Examiner Wrenn: In view of your first question that it was a monopoly, and the second that it was single carrier

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{fol. 3996] service, are you talking about the same thing?

Mr. Gambrell: Yes, sir. It is the only single carrier operator there.

Examiner Wrenn: Then if you are agreed on it, proceed.

The Witness: There is Avianca, and other lines. Any talk of monopoly in this area is obsolete.

By Mr. Gambrell:

Q. Isn't one of the main purposes of your application here to get around a transfer at Balboa, Mr. Roig?

A. Yes, sir.

Q. If it is then, you are not going to belittle a transfer between National and Braniff at Havana, are you? You are not going to say in one case that it is inconsequential, and in the other that it is not?

A. No, that wasn't the question. I am not saying it is inconsequential.

Q. Is it your position in this case that if there is to be expedited and improved service between the eastern half of the United States and Buenos Aires, via Balboa, that it should be provided (or not) by carriers entirely independent of the Pan American system, but by carriers within the Pan American family?

Do you argue that do you take the position that it is in the public interest to establish this expedited service which you claim is needed on that route via merely enlarging the Pan American picture, or wouldn't it be better to establish it via giving greater strength to independent carriers who might get together on it?

Mr. Gesell: I think I must object to that.

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{fol. 3997] Examiner Wrenn: I think you are going to argue with the witness the rest of the afternoon on that point.

The Witness: Shall I answer the question?

Examiner Wrenn: If you like. Go ahead.

The Witness: There is only one carrier in this area that I am interested in, and that is Panagra.

There is only one way that Panagra can adequately serve its traffic, and that is by making it possible for the traffic which boards its planes south of Balboa to go through to a terminal in the United States.

Now, it happens that it is the only way of working that out at the moment—is with Pan American.

By Mr. Gambrell:

Q. Following that, have you considered the position of Eastern and the extension of Eastern to Balboa as a possible solution for that?

A. I have considered that very seriously, but not as a solution, but as a menace.

Q. Don't you realize that in respect to the traffic flowing between this country and the area now served by Panagra that there is a greater volume passing through Miami than through the Canal Zone gate, of that traffic? The stream of traffic is larger in Miami than it is in the Canal Zone. Is that right?

A. I don't understand the question. You mean the stream of traffic to all points?

Q. On your system, on the one hand, and points Miami and north on the other. Don't you know that the stream of—

A. I don't understand the question.

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[fol. 3998] Q. Don't you know that the stream of traffic in relation to this country gets thinner and thinner the further south you go?

A. You mean in South America, or in United States?

Q. Well, Miami, Balboa and points south. It gets thinner the further down you go. Isn't that right?

thicker.

A. Not on Panagra, no. It gets thinner.

Q. I am talking about U. S. traffic.

A. Oh, yes, U. S. traffic, that is correct.

Examiner Wrenn: We will take a five-minute recess at this time.

(A short recess was taken.)

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[fol. 3999] By Mr. Gambrell:

Q. You said that in relation to traffic between this country and points on your system and South America, the traffic gets thinner the further down you go. I am not counting the local traffic, just counting the traffic that goes through this country.

A. Well, yes, but the point is where it begins of course, to get thin, whether people who are going to Ecuador get off at Barranquilla or Peru get off there. By the time you get to Chile it is still further less but that doesn't necessarily mean that it is less at Balboa than at Miami because there is a good deal of pick up at Balboa from other routes, Central America and Pan American and central routes.

Q. That would be transferred traffic at Balboa anyway, wouldn't it?

A. Yes.

Q. It wouldn't be through traffic?

A. It would not be through plane traffic.

Q. That is what I am getting at. The through plane traffic gets thinner the further south you go from Miami, doesn't it?

Mr. Gesell: May I inquire whether Mr. Gambrell means through traffic to Miami or through traffic to all the United States gateways.

Mr. Gambrell: I am speaking of the traffic that passes through Miami in relation to Balboa and points beyond. It gets thinner the further down it goes.

By Mr. Gambrell:

Q. Doesn't it?

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[fol. 4000] A. Well, if you start a plane from Miami and run it to Buenos Aires there will be fewer United States

travelers who got on at Miami on that plane at Santiago, we will say, than there were at Lima, assuming somebody got off at Lima and they usually do.

Q. If there has got to be a transfer somewhere the transfer will involve fewer people at Canal Zone than it will at Miami. There has got to be a break at Miami or break at Canal Zone—would say the break at Canal Zone would involve fewer transfers of through passengers, is that right?

A. Of course that is only one factor in the case but I don't see how that would be true except to the extent that traffic got off at Balboa or on at Balboa.

Q. You took pains in your direct examination to emphasize that you people didn't want Eastern to come to Canal Zone didn't you?

A. Yes.

Q. That has been your stand all along?

A. Yes.

Q. And you stated that you didn't want to cooperate with Braniff, that you wanted to cooperate with your parent company, Pan American, isn't that right?

A. Well, for the reasons which I have indicated, yes.

Q. Doesn't your proposal in this case then boil down to seeking a mechanical and economic arrangement whereby the Pan American system which now dominates the eastern route hemispherically, you are trying to achieve an arrangement whereby the Pan American system can lock out the efforts of Eastern, National and Braniff on the western

[fol. 4001] route of the hemisphere. Isn't that the objective?

Mr. Hamilton: If the Examiner please, I don't think there is anything in the record that supports a lot of the assumptions in that question.

By Mr. Gambrell:

Q. Isn't that a fair interpretation? You don't want Eastern there. You don't want to cooperate with Braniff. You want to cooperate with the Pan American system. Doesn't that mean then that you are trying to freeze out any effective what you might call hemispheric competition of ex-

pediting service from North America to South America involving the eastern half of the United States?

A. It doesn't mean that to me.

Q. You speak in paragraph 6 of settling the controversy. You have referred in paragraph 5 to four proceedings.

Exam. Wrenn: Now, you are talking about the petition itself, are you, Mr. Gambrell?

Mr. Gambrell: That is right. Still on the petition.

By Mr. Gambrell:

Q. Can you state in a word or two what the controversy is so that we may know what we are settling or trying to settle in this case?

A. Well, the controversy has been the difference of opinion regarding extension of Panagra's route to a terminal in United States.

Q. It is a controversy between whom?

A. It is a controversy between Panagra and Pan American and between Grace and Pan American.

Q. And the Pan American Corp. too or not?

A. I think they were parties to 779. I am not sure.

[fol. 4002] Q. You mean both Pan Americans?

A. I think so.

Q. Pan American and subsidiary?

A. I think they were both parties in 779.

Q. Does that controversy exist right now?

A. No.

Q. Is this agreement the only thing that has happened to dissipate it?

A. Well, this agreement is the settlement of the controversy.

Q. While that controversy was on was there competition between Panagra and Pan American Airways?

A. Well, about to the same extent that there will be after the agreement with the exception of the pooling agreement if that is adopted.

Q. You think there may be less competition after the agreement than before?

A. And think if the pooling agreements is adopted it would be somewhat less but apart from that I think it is about the same. It might be a little more or less.

Q. Is it your thought that it is in the public interest to reduce competition if there be any between Panagra and Pan American?

A. Well, I think that is a philosophical question and I will have to give you a philosophical answer. I think in an area such as this where we have got 10 or 15 companies in existence and in prospect, most of them foreign companies, it is in the interest of the American companies to put up a reasonable front against that foreign situation

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[fol. 4003] even at the cost of eliminating a certain amount of destructive and ruinous competition between themselves.

Q. It is the desire, is it not, of Pan American and Panagra in this proceeding to establish an arrangement which will permit just as few passengers as possible to be hauled by and between Eastern and Braniff hemispherically, isn't that right?

Mr. Gesell: I don't understand that question, Mr. Examiner.

A. That involves an assumption that Eastern is in this picture in getting to Balboa. They are not out there yet.

Exam. Wrenn: Clarify your question, Mr. Gambrell. You are talking about an arrangement between Eastern and Braniff where?

Mr. Gambrell: In North America and South America and Central America.

Exam. Wrenn: I understand but under the present conditions as they are now.

Mr. Gambrell: Well they have to get a bridge between them to get there.

Exam. Wrenn: Then it isn't possible yet. I am trying to clarify it so the witness can answer your question.

By Mr. Gambrell:

Q. Mr. Roig, you will assume, will you not, that Eastern, which has been virtually the 100 per cent carrier north

of Miami is struggling to maintain its position in relation to Latin American traffic. You will assume that, won't you? —125—

[fol. 4004] A. Well, I assume that they have had until National came into the picture a monopoly on the carriage of that traffic and I assume when the Pan American domestic route case comes up they will struggle to maintain it.

I didn't know there was any struggle going on at the moment. The only struggle is to chisel in on somebody else. It isn't to maintain what you have got.

Q. Is it the position of Panagra and Pan American as depicted on Pan American-Panagra Exhibit No. 1 in this case, is it their purpose to provide a service which will minimize as far as possible the hauling of passengers by and between Eastern and Braniff and any other carriers between North America and South America. Is it your desire to minimize their participation as far as you can?

Mr. Gesell: I don't understand that question, Mr. Examiner. It is the same question we tried to get clarified before. Mr. Roig has testified several times as to what the purpose of the agreement is.

Mr. Gambrell: He is on cross examination.

Exam. Wrenn: Do you understand the question, Mr. Roig?

A. Well, it is Panagra's purpose to get all of the traffic in the area that we can just as I assume it is Braniff's and Eastern's and everybody else's.

By Mr. Gambrell:

Q. So, when you wanted to keep Eastern, as you said a while ago, out of Canal Zone it was with the thought of preventing Eastern from having a substantial share of the Western Hemisphere business, wasn't it?

Mr. Gesell: What is the Western Hemisphere business? —126—

[fol. 4005] A. At one moment you are asking me a question that seems to imply that it is wrong to compete and the next minute that it is wrong to compete if that competi-

tion what you call minimizes Eastern's position.

I understand competition. I don't understand minimizing. It is our object to get all the traffic we can.

By Mr. Gambrell:

Q. And to prevent Eastern from getting all that you can prevent Eastern getting, isn't that right?

Exam. Wrenn: Where?

Mr. Gambrell: On the route between the West Coast of South America and Balboa and Miami and points north.

Mr. Gesell: Eastern isn't in that route until we get to Miami.

Mr. Gambrell: Just let the witness answer.

Mr. Gesell: No, I won't, Mr. Gambrell.

Mr. Gambrell: Then, let Mr. Gesell take the stand.

Mr. Gesell: I think my remarks were addressed to you and not Mr. Gambrell.

I say Eastern isn't in that route and therefore the question isn't appropriate.

He talked about the western hemisphere a moment ago which is equally vague and indefinite.

Mr. Gambrell: I tried to—

Exam. Wrenn: Just a minute, I want to know whether you are talking about preventing the extension of Eastern from Miami to the Canal Zone, or are you talking about the situation there with Eastern as it now exists at Miami?

Mr. Gambrell: I asked it in general terms. It would be applicable either way. I asked if his efforts in this case

[fol. 4006] are to provide a service which would

Exam. Wrenn: If that is the purpose, why don't you ask the question if the intent of this agreement is to prevent Eastern from getting to the Canal Zone.

Mr. Gambrell: I didn't want that. I didn't ask that question. That isn't my question.

Exam. Wrenn: Then I am confused as to what you did ask.

Mr. Gesell: So am I.

Mr. Gambrell: If Mr. Gesell will rest—

Exam. Wrenn: Let's let Mr. Geissell alone. I want to know what this is.

Mr. Gambrell: I will ask the question again.

Exam. Wrenn: Go ahead.

By Mr. Gambrell:

Q. Is the purpose of this agreement, Exhibit A and B, or either, to capture, control, and haul or preserve to Pan American just as much of the business between South America and North America via the Miami gate as possible?

A. Speaking for Panagra, the object is undoubtedly to preserve as much of our traffic as we now have and hope to get and are reasonably entitled to between Balboa and Buenos Aires, by offering that traffic the same kind of service through to destination in the United States that our competitors are offering.

Q. Which competitor?

A. Braniff at the moment, FAMA.

Q. Just a minute.

A. You asked for them. I will give them to you.

Exam. Wrenn: Let him answer the question.

for 4007 \* A. Avianca, TACA, British Overseas, Pan American International, Tampa New Orleans and Tampico and Tampico and FAMA, in addition to Braniff.

By Mr. Gambrell:

Q. Will you explain how you are trying to give the same sort of service to the same traffic as Braniff is giving?

A. By making it possible for a passenger on our plane in that respect we are aiming to give better than Braniff take

gives because we want to ~~take~~ our passengers straight through to a terminal in the United States.

Q. You are not seeking to give the passengers at Houston and Kansas City any service, are you?

A. We can't attempt to serve every port of entry.

Q. Braniff isn't threatening your business in relation to the eastern half of the United States, is it?

A. Very definitely with this national hookup.

Q. I mean by direct service.

A. But that is a question of degree. Of course it isn't as good as a direct service but of course it is a very definite threat to our business.

Q. Let's look at agreement A. I notice in paragraph 1 you speak in the third line of aircraft operated by Panagra into the Canal Zone from Lima or any point south. Why was that limited to that?

A. Well, it was thought that through flights with Panagra planes ought to have a reasonable relation to through traffic from Panagra's territory, and they shouldn't, for instance, to take the other extreme case, just put on planes at Balboa which would have no particular significance in

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[fol. 4008] connection with the through traffic. Lima was picked out as a convenient and reasonable point.

Q. Is it contemplated that this agreement will have relationship to all of Panagra's planes or only a certain selected few?

A. At the present time the exhibits show that we contemplate one schedule through with DC-4 and an additional one with DC-6 when that plane comes into service. That would mean that our interior service which we are now operating and expect to continue to operate, into Balboa, would not proceed through and if we added additional services it would be a matter of our indicating additional schedules. The interior service is a local service.

Q. What I was getting at is: Will all of your DC-4 airplanes be impressed into this operation, or will there be some that will never be involved in it?

A. Well, the physical planes, I take it, there will be some operating for instance between Santiago and Buenos Aires on local runs that might not get up here at all except when they were put on an international run but the idea is that the through international services which we run from Buenos Aires to Balboa would, with those planes, be carried on through.

Q. I get that point. I was just wondering about the separation of your fleet into two parts, one part that is rotated into Miami and another part that isn't?

A. Well, the only part that wouldn't be rotated in would be a plane that might be in the south running locally between Buenos Aires and Santiago or some other spot on the

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[fol. 4009] line. It would only be rotated in then when it happened to suit to put it into international service.

Q. At the bottom of paragraph 1 it says "If Panagra shall deem it impractical for the particular aircraft operated by Panagra into the Canal Zone to continue the flight to the Continental United States Panagra may substitute another aircraft."

Why is it that Pan American has no option to reject a plane and only Panagra can make the switch.

A. Well, Pan American have the option to reject planes which they don't consider properly equipped or properly qualified and so on. This particular thing, the sentence you read was to cover a particular situation of a plane arriving at Balboa and owing to some schedule exigency or some necessity of maintenance or something, it wasn't prepared to go right on through. We then have the right to transfer our traffic in that emergency to another plane which has not been south of Lima.

In the absence of such a provision we might lose that through carriage on the ground that the plane had not been south of Lima. It is purely an emergency provision.

Q. In paragraph 2 you have selected Canal Zone Miami. Why did you select Canal Zone-Miami rather than some other direction?

A. Well, because that is the most direct route available at the moment. Pan American's other route through central America are not as ~~correct~~ as this for our purposes.

Q. Is it also because that is the heaviest traffic route?

A. It is the heaviest in international traffic, yes.

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[fol. 4010] Q. You speak of operating non stop unless experience demonstrates the desirability of making stops. How would that be determined?

A. Well, if the loads were running excessively heavy you might say and we wanted to stop in order to lighten fuel load or conversely the loads were running light and we wanted to pick up some local traffic, any number of conditions of that kind which related to volume of traffic quite largely.

Q. In 2(b) you speak of going to other routes which Pan American may get.

Is it your thought that this agreement would permit such operation without further negotiation with CAB; in other words, that CAB now bind its hands for 99 years--

Exam. Wrenn: Mr. Gambrell, I think you are covering matters that were brought out on direct. It may have been before you came in. I will let the witness answer the question though.

A. My understanding is that the Board has to decide in the first instance the question of public convenience and necessity justifying Pan American's routes in the United States.

Now that being decided they pick out the equipment and decide what equipment they are going to use.

I would assume that this language would authorize them to use the Panagra equipment on some of their schedules.

By Mr. Gambrell:

Q. In other words it would authorize the interchange provided a certificate is granted, it would authorize it without an interchange proceeding?

A. Not an interchange. It would authorize Pan American to use on some of its schedules Panagra planes under

{fol. 4011} this agreement. As a legal matter I can't tell you. Perhaps that question would be opened and could be thrashed out in that Pan American proceeding. I don't know.

Q. You use the words here "shall proceed over such routes."

A. That is between the parties.

Q. If the Board approves that wouldn't you assume that the Board would be prejudging an interchange at the time of the granting of the certificate?

A. Well, I would assume so unless the Board made certain reservations. I presume this matter would be discussed in that proceeding and if the Board didn't want their decision to be that extensive I suppose they would say so.

Q. In that connection, may I ask whether or not these two agreements, in your view, are interdependent? That is, contract A and contract B can either stand alone, practically.

A. Well, it wouldn't be exactly the same if they were separated.

Q. Would Grace—

Exam. Wrenn: Let him finish. Did you have something more?

The Witness: I was just going to look to see a little bit.

Exam. Wrenn: All right. I am sorry, Mr. Gambrell, go ahead.

By Mr. Gambrell:

Q. Would Grace or Panagra be willing to go through on one if the other were denied?

A. Well, I will tell you; Mr. Gambrell, in the preparation

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[fol. 4012] of these agreements, as I recall it, there was some question of which provisions properly belonged in one and which in another, and I think there are some legal considerations involved in that; and I think Mr. Friendly can answer that question better than I can.

I think some of the provisions in B, might have been incorporated in A. I am thinking now, for instance, of things like the termination clause.

Q. I am not asking for the Pan American or Pan American Corporation but for Grace or Panagra. Would Grace or Panagra be willing to have either of these contracts if the other would disapprove?

*repeat I*

A. I ~~repeat~~ ~~he~~ can't answer that question without studying the thing at length. I have never thought of it.

Q. You spoke a moment ago of the Board's possible modification of the contract. Could you throw a little light on the record as to where and to what extent Grace or Panagra would be willing to yield on any of the paragraphs or parts of these contracts?

Mr. Gesell: I don't think that is a proper question.

A. I don't think that is appropriate.

Mr. Gesell: We are submitting this agreement for approval.

By Mr. Gambrell:

Q. The point is that Mr. Roig says he is in a great hurry. I thought if he could point out the ones that are not essential it would help things along a little bit?

A. I am not in such a hurry that we haven't got time to have a good agreement and I think this is a good agreement.

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[fol. 4013] Exam. Wrenn: All right. Go ahead, Mr. Gambrell.

By Mr. Gambrell:

Q. At the bottom of page 1, paragraph 2, you speak of "Traffic experience demonstrates the desirability" of certain arrangements; to whom would that demonstration be?

A. It says to the satisfaction of both parties.

Q. In subparagraph C of 2 you speak of "If Panagra shall so request Pan American will file for non-stop between Canal Zone and New Orleans."

Is it contemplated that if Pan American wanted to do the non-stop and Panagra didn't ask for it, it couldn't be done?

A. Oh, no. It says in so many words that Pan American can go ahead irrespective of our request. I mean it is all right here.

Q. Subparagraph D in the middle of page 3: "Pan American Airways agrees to use its best efforts to obtain from the Civil Aeronautics Board authority to operate the various routes and non-stop services referred to in this paragraph, and Panagra agrees to support Pan American Airways to this end."

What do you mean by "The best efforts" there, Mr. Roig?

A. Well, it means that they would seriously press their application and present their case in the best possible form the same way you would present a case.

Q. Do you conceive of new route proceedings as being in the nature of legislative proceedings?

Mr. Gesell: Is that relevant?

Exam. Wrenn: I am willing to hear the relevancy of it.

Mr. Gambrell: I am leading to a point.

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[fol. 4014] By Mr. Gambrell:

Q. Isn't it true that constitutionally speaking the Supreme Court has often said that granting franchises is a matter of legislation or ~~sub~~legislation?

Mr. Gesell: Is that within the witness' qualifications?

Exam. Wrenn: How does that tie in?

Mr. Gambrell: I am leading up to the question of the propriety of a great system like Pan American and the great system getting together and conspiring to procure what constitutional decisions have held to be legislation.

Mr. Gesell: That characterizes this in an unfriendly and unfair manner. I don't think it is appropriate on the record and I move it be stricken.

Mr. Hamilton: I associate myself with that motion.

Exam. Wrenn: Any reason why it should remain, Mr. Gambrell?

Mr. Gambrell: I merely want to ask him: does he realize that that is an agreement between these groups to obtain legislation?

Exam. Wrenn: All right. Strike the previous sentence about which the motion was made.

Do you have the question?

The Witness: I don't consider myself qualified to answer this question. As far as my opinion goes I certainly do not consider this legislation in the sense that you have referred to it.

By Mr. Gambrell:

Q. You have also undertaken, I believe, to put forth your best efforts to have this agreement approved. What

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[fol. 4015] have you done to have it approved? What efforts have you made?

A. Well, we are here today. We have prepared the exhibits and have prepared all of the necessary supporting testimony and we are here placing it on the record.

Q. In a preparatory way in your direct you spoke of following the mandate of the CAB decision. Did anyone undertake to explain to you what the CAB decision meant —any official of any kind?

Exam. Wrenn: What do you mean? Official of Panagra or Pan American or what?

Mr. Gambrell: Any public official. He was acting under public—

Exam. Wrenn: You said public official. That is all I wanted to know. Go ahead.

By Mr. Gambrell:

Q. You said you were acting under public mandate?

A. What I meant by that was the language of the decision itself which I did feel personally quite competent to interpret. It seemed very clear to me.

Q. Has any public official stated to you or your company that this arrangement that you have brought here is in compliance with what you call the mandate of the Commission?

A. No.

Q. Have you discussed it with any public official?

Mr. Gesell: Do you see any relevance to this, Mr. Examiner? The witness has stated that no witness has said that it is consistent with the mandate? Isn't that sufficient for Mr. Gambrell's purposes?

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[fol. 4016] Exam. Wrenn: I am inclined to think it is.

Mr. Gesell: The witness has given his own opinion that it is consistent with the mandate of the Board. Isn't that sufficient?

Exam. Wrenn: You have a question pending. Let him answer it.

A. I don't recall having discussed this mandate question or this contract with any official.

Q. You haven't discussed it with any official of the government as to whether this is the answer that was contemplated in the CAB decision?

A. No, I don't recall.

Q. You haven't had any conference with any public officials about it?

Mr. Gesell: That is too broad a question. What does he mean—conference with government officials about the agreement.

Exam. Wrenn: Do you have reference specifically to CAB?

Mr. Gambrell: Not necessarily.

Exam. Wrenn: What would any other have to do with it?

Mr. Gambrell: My question was inspired by his statement that he had come in with this document because—

Exam. Wrenn: Just tell him what you are talking about.

The Witness: I think I have answered the only question.

Exam. Wrenn: I am not trying to curtail your questions but I want you to make it specific so the witness knows what you are answering about and let's get the answer.

Mr. Schneider: The witness understands the question

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[fol. 4017] I am sure. If anybody is confused it isn't the witness.

Mr. Gambrell: I just wanted the benefit of his views as to how responsive this is to the mandate and whether or not any public official had told him it was.

By Mr. Gambrell:

Q. Has anyone indicated it was?

A. No.

Exam. Wrenn: Any public official?

By Mr. Gambrell:

Q. You haven't asked any public official whether it was responsive?

A. No.

Q. In paragraph 3: "At least 30 days prior to the first schedule through flight, Panagra shall give notice to PAA about tag number and nature of flights."

Why is it that only Panagra is given this privilege and not Pan American as to designating the number and nature of the flights?

A. Well, you see Pan American has the right to designate the total number of flights that they are going to operate, but we have the right to designate the number that are to be operated with our through planes.

Q. Well, if this is a Pan American operation as I thought you one time said—

A. It is.

Q. —then why shouldn't Pan American have some say in the nature and number of these flights?

A. Well, this was a very important concession to us and to our traffic and it was felt that we should be in a position to decide the number of schedules that were necessary to accommodate our traffic, and Pan American agreed to that proposition. They might have refused it. If they had the contract would have been much less attractive and much less in the public interest.

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[fol. 4018] tion to decide the number of schedules that were necessary to accommodate our traffic, and Pan American agreed to that proposition. They might have refused it. If they had the contract would have been much less attractive and much less in the public interest.

Q. Why did you use the Panagra crews all the way? Why did you provide for that?

A. Well, you see, one of our problems over a good many years has been the fact that we have been operating wholly outside of the United States—we have been the only American airline in that position—and one of the things that we were very anxious to accomplish was to make it possible to bring crews to the United States so that men could alternate on the possibility of coming to their home country.

Also it isn't altogether sentimental. There are certain very definite advantages in having crews come to this country and be stationed in this country from time to time where there was a greater body of aviation knowledge being passed about all the time. That was one reason.

The other reason is the desirability, we thought, of having the crew of the company whose plane it is flying the plane; to always have the question, when one company is flying the plane of another, a question of division of responsibility, difference of opinion perhaps as to the condition of the plane and all that kind of thing, and as a

practical operating matter I think it is more efficient operation to have the same crew that has flown the plane up, fly it right through.

Q. Do you think that it is preferable to have a familiar

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[fol. 4019] plane and a familiar flight crew rather than to have a familiar flight crew with a familiar ground crew?

A. Well, I think you have to make some choice under that heading. You might argue, and perhaps in the old days would have, that it was desirable to have all three the same, but actually in the present development of aviation, and with all the war experience, the ground crew, I think any operating man would agree, was the lesser choice between two people who operate airplanes over all kinds of routes without controlling the ground crew.

Q. Paragraph 4. You say that the two parties will consult with a view to fixing the schedules. Who will decide?

A. Well, if you read on you will see there that there is a complete provision of what happens in the event of disagreement. The first sentence contemplates that they will be able to agree but then it goes on and specifies in detail what happens if they do not agree.

Q. What will be the relationship of the schedules through the Canal Zone route and the schedules through the Puerto Rico route?

A. It has never occurred to me that there would be any relationship between them.

Q. They will all be going from the eastern half of the United States to Buenos Aires?

A. There might be some relation at the other end that is true, or either end.

Q. Why is it that Panagra shall fix the hours of arrival northbound and departure southbound at the Canal Zone?

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[fol. 4020] Why does Panagra have that right as distinguished from Pan American?

A. That again was another important concession like the one we were speaking of a moment ago. It is very important to us to be able to do that because that is the control on our whole schedule South of Balboa, and it means that

we can control our schedules South of Balboa and still be assured of a connection through to United States.

Q. At the top of page 5 you have the expression "respective personnel." Whose personnel are in the plane while it is flying from Balboa to Miami?

A. Panagra's.

Q. So Panagra has to instruct its personnel regarding operations north of the Canal Zone, is that right?

A. Well, that particular clause wasn't intended to relate to that situation. It may be a little blind. It might have that implication. What it had to do with, as appears later on, was the question of late arrivals.

For instance, if we have a plane that is due at Balboa from the South, let's say at 9 o'clock in the morning, and is to fly right on to Miami after the usual just short stop at Balboa but suppose the plane is three or four or five hours late, and it suits us, in order that it remain on its next schedule, to turn it around, not take it on to Miami.

*and been*

That happens ~~every day~~ on Eastern ~~4 have put off quite frequently~~ on every line in the United States to meet that

*in the United States.*

situation. It is common operating practice. Or you might have a plane arrive with a delay let's say and meanwhile there would be another Pan American plane ready to take

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[fol. 4021] right off that didn't have a load and it might be simpler to transfer the traffic. It is to cover all kinds of operating problems of that sort.

Q. But you state that when you refer to respective personnel there, and that the parties will instruct their personnel, that Panagra in that connection would be instructing the flight crew and not Pan American?

A. No. I am not thinking of our flight crew at this time. I am thinking of the respective personnel. What we had in mind was the personnel of Panagra and Pan American at Balboa.

Q. Don't you think, Mr. Roig, that this contract, as you have given exposition of it would provide a great deal of foggy no man's land of responsibility in respect to personnel here? That is, where the personnel wouldn't know

whether they were following Panagra's instructions or Pan American's instructions?

A. As a matter of fact, a great deal of effort was made to avoid just that sort of thing, and I think it is successful to a remarkable degree. I think just the opposite of what you said.

Q. Isn't it your view that a clean-cut lease where everything is turned over to Pan American on a rental basis north of Canal Zone, would constitute a much sounder and more responsible organization than this comingling of flight personnel and ground personnel all the way up to Miami?

A. In my opinion just the opposite is the case.

Q. In subparagraph C, page 5, you say: "Pan American Airways shall have a right to inspect any aircraft which is

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[fol. 4022] not satisfactory in the light of regulations." Shouldn't that be "shall" and not "may?"

A. Well, I assume they would.

Q. Let's turn to page 6. You speak of having control over the operation of Panagra's aircraft, Pan American having control. Would Pan American have control of the crew too? The crew wasn't mentioned as such.

A. Yes. Well, on their sector.

Q. Who pays the crew?

A. Well, in the first instance I have forgotten the detailed provision but I think in the first instance perhaps Panagra would pay them but all of the expenses of the operation are for Pan American's account.

Q. Who trains the crews?

A. We have a special provision here for training by Pan American of our crews. As a matter of fact the initial crews we would use are already trained. They are crews that were trained by Panagra when we were operating the Army Transport Service out of Miami. They have flown the route many times.

Q. Isn't one company training the crew of another in itself a dilution of morale and responsibility?

A. Well, that is a matter of opinion. I think that until the airlines develop the idea of working a lot of things together that they have thought, that they had to work

*road*

separately, they have got a long ~~row~~ ahead in getting out of the red. There is more nonsense talked under that heading than almost any other in practical airline operations.

Q. You spoke in your direct of the advantage of training

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[fol.4023] in this country. Do you know of any reason why that training in this country by Pan American or Panagra's personnel couldn't be accomplished without this interchange arrangement that you are speaking of?

A. I have no reason as I said this morning to believe that it could be arranged separately.

Q. I mean physically it could be, couldn't it?

A. Physically?

Q. Yes.

A. Yes, it could be except that it wouldn't be as expeditious if we were training crews isolated up here (indicating) instead of, say, people who were in co-pilot positions or taking check training and so on as they went along, and who were normally moving in and out of here.

The expense of moving people up and down is something terrific. I am going to answer that question because it has to deal with the practical side of it. We estimate that when we send a man down to the Coast to Lima for training and put him through the course and he doesn't pan out and we have to bring him back it costs us \$2500 or \$3500.

Only in the month of August in closing the account for the month of August, we set up a reserve on our books of \$12,000 a month to cover traveling expenses of people who just have to move back and forth,—not all co-pilots—and in the month of August we had to pick up \$34,000 extra for that reserve because it was overdrawn by that amount.

The expense of moving people down there and having them not stick, or having them not check out, and then hav-

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[fol. 4024] ing to bring them back and send somebody else down is a very enormous item and a saving of that expense is one of the great advantages we hope to get from this contract.

By Mr. Gambrell:

Q. Let's consider the application of what you said to your situation?

A. Yes.

Q. Let's assume you don't have any interchange, and let's assume that you and Pan American are willing to have the training done anyway by Pan American. It would be done we will say in Miami in either case. Will that be a reasonable assumption?

A. No. It is an assumption out of whole cloth. How can you assume that I can go out and make contracts with Pan American on a basis which I have never discussed and have no reason in the world to believe they would agree to.

Q. You misunderstand me.

A. I don't think so.

Q. I am speaking of the Miami location, the Miami school. Is that where the school is?

A. Yes.

Q. All right. If you don't have an interchange contract, the pilot you hire to spend a week or a month or whatever time in Miami studying in the Pan American flight school?

A. Yes.

Q. And when he gets good enough, if they check him out he goes on down to Balboa and starts to work for you.

Mr. Gesell: What is this?

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[fol. 4025] Mr. Gambrell: Just a minute, let me finish.

By Mr. Gambrell:

Q. Now, let's assume that this is approved and it is done the other way by Pan American under this contract, you still have that pilot landing in Miami there from Wichita or wherever he comes from, and spending time at Miami and getting checked out as a good pilot and then he goes on down and starts operating for you, so it is the same from a physical and rotational standpoint either way you go, isn't it?

Mr. Gesell: Mr. Examiner, I object to that long question because it is based on an assumption which the witness

says is not present here. He says he has no basis to feel that there would be any such agreement possible.

Now, why go in and discuss something that we haven't got before us, which isn't agreed before the parties, and which the witness has said he doesn't think is possible.

Mr. Gambrell: I don't think we want to put a premium here on obstinacy and refusal to contract, and say that this thing shall be approved because—

Exam. Wrenn: All right. I think your argument is more in the form of your question there. I think you can get what you want in a different form.

As I take it what you are trying to find out is whether the advantages claimed for this pilot training can be disassociated from this contract.

Mr. Gambrell: Right.

Exam. Wrenn: I am perfectly willing for the witness to answer that.

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[fol. 4026] By Mr. Gambrell:

Q. Let's assume that the parties are willing to do business regarding training even though this contract doesn't go through. You say they wouldn't but let's assume for the sake of discussion they would.

Do you know any reason why that couldn't be physically carried out?

A. By physically, you mean the location in Miami.

Q. It is the same geography in either case.

A. Miami is the same in either case.

Q. That is right.

A. I do think however that there are considerations which make it more advisable under this contract and with our pilots coming through, than otherwise, but the detail of that I would rather let Mr. Kirkland, who is our operating man here go into it. I am not qualified to go into the details.

Q. You are not arguing that training feature then as a very powerful factor in this case, are you?

A. Yes.

Q. And you are saying that—

The Witness: Now, that is where the fallacy of this assumption, Mr. Wrenn, comes in:

Exam. Wrenn: All right. Go ahead.

The Witness: The question is now asked based on the theory that we could make this contract and I have no reason to believe that we could.

By Mr. Gambrell:

Q. Would you make it if Pan American were willing?

Mr. Gesell: Isn't that increasingly iffy?

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[fol. 4027] The Witness: Sure. It is an iffy hypothetical question. We are getting nowhere.

Exam. Wrenn: I don't see where we are going. I think I see the point you are driving at here but we don't seem to be reaching it.

Mr. Gambrell: We could if he were a willing witness.

Exam. Wrenn: I don't know about that. That is open to argument.

Mr. Gambrell: He says it can't be done. I want to know if it is because Panagra objects or because Pan American objects.

Mr. Gesell: It has never been broached and never discussed. How can it be determined?

Mr. Gambrell: Then how can he say it is utterly absurd to conceive of it?

Exam. Wrenn: If you are trying to tie this in as to how much of the benefits arising out of this particular provision—let's put it this way: If you are trying to find out how much of the contract depends upon the benefit arising out of this particular provision, I am perfectly willing to have you get it and I think the witness is perfectly willing to give you his opinion on it.

Mr. Gambrell: The witness stated a while ago that it was out of the question to consider this thing because it couldn't be done. I understood that Mr. Gesell, his counsel, agreed with him, and yet Mr. Gesell says a minute ago it has never been considered.

The Witness: I did not say it could not be done and that I had is just where your question goes over the falls. I said no

[fol. 4028] reason to assume or believe that it could be. How can I assume, without ever having discussed the thing with you, that I can make a certain contract with you.

Exam. Wrenn: I think we have argued this enough.

Mr. Gambrill: May I ask if Panagra is willing to enter into such a disassociated training agreement?

The Witness: I will not answer that question. I can't answer it this minute. I will have to consider the thing as a realistic proposition.

By Mr. Gambrill:

Q. Do you know any reason why it couldn't be handled as a disassociated project? I am asking this for the benefit of the five members of the Board and these two examiners.

A. You mean from Panagra's angle assuming Pan-American were willing?

Q. And from Panagra's and Grace's angle?

A. From that angle if Pan American were willing it would be perfectly possible to make an agreement to cover training at Miami but I do not think it would be the same agreement or have the same effect as this one.

Q. May I ask if you know of anything to indicate that Pan American or Pan American Corp. wouldn't be willing to make such agreement? Have you heard that they wouldn't?

A. I don't know anything one way or the other. They can answer that themselves.

Q. Now, as to the maintenance, you spoke of that as a large factor and the avoidance of moving equipment back and forth for maintenance in Miami. Do you undertake to state that the fact that a certain number of these airplanes

[fol. 4029] are brought into Miami will solve the problem of bringing those in that aren't brought in on service there?

Mr. Gesell: What is that question again please?

Exam. Wrenn: Read the question please.

(Question read)

Exam. Wrenn: What are you talking about, Mr. Gambrell?

The Witness: I think I know. I think I can answer the question.

Exam. Wrenn: All right. Go ahead.

The Witness: As a matter of fact, so far as four-engine equipment is concerned all of our planes would come to Miami in regular course under this contract except possibly

on the run  
one that might be stationed in the south of a line between Santiago and Buenos Aires. Two, if you like. I don't think there would be two but suppose there were, as to those planes they would be absolutely uniform with the ones on the through run and the practice which would be followed by every airline under similar circumstances would be followed. When those planes were due to come to the shop they would be put on the line and brought through. That would leave our two engine ships which would not be coming through, and at the present time we have no plan for maintaining those ships at Miami.

We plan to continue to maintain those in Lima.

By Mr. Gambrell:

Q. It would mean then that you would have to maintain a base of your own and then hire somebody else to do base work for you too?

A. So long as we have that set up, yes, that is true.

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[fol. 4030] Q. And you don't expect to dispense with two-engine ships, do you?

A. Not at the moment, no.

Q. Now, a question about the stimulation of competition, and engineering and other procedural developments referred to in Section 2 of the Act. Is it your belief that your company can render its greatest contribution to air transportation in respect to maintenance efficiency and maintenance cost by delegating your maintenance to another company?

A. To the extent that we have in mind delegating it I think it is sound aviation economics, yes.

Q. Do you consider the extent of your contemplated delegation as substantial or only inconsequential?

A. I think it is quite substantial.

Q. Then you feel that an airline as great as you regard yours can very well abdicate on maintenance and turn it over to somebody else in working out its destiny.

*an*

Mr. Gesell: I have no objection to the question.

Mr. Gambrell: All right.

A. Well, we don't intend to abdicate on maintenance. I do think very strongly, Mr. Gambrell, as I said before—and there is quite a tendency in that direction—that it is sound aviation economics for people to get together on a good many things. There have been a lot of newspaper articles and magazine articles written on it and all that kind of thing.

So far as I know this is the only realistic step that has been taken in that direction and I think it is a sound step.

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[fol. 4031] By Mr. Gambrell:

Q. Where do you draw the line on what they should do together and where they should get into different camps and compete with each other?

Exam. Wrenn: Aren't we getting a little far afield?

Mr. Gambrell: I don't think so.

Exam. Wrenn: It seems to me you are. It isn't clear to me.

By Mr. Gambrell:

Q. Would you say the same thing about your personnel training that you should abdicate there and have that done by somebody else?

A. A certain part of the technical training, that would be possible but a certain part of the other training would not be possible because that relates directly to your direct situation but there is a great deal of training—there is a lot of talk and it should have been done if it hasn't been done already.

There is the question of training stewardesses, that is one of the questions brought up by Mr. Smith in his article in the Post that everybody had to train their stewardesses. It is just nonsense.

Q. Isn't it true that there are peculiarities regarding your route as distinguished from domestic operations which makes it all the more desirable that your personnel should be trained in Latin America?

A. That is certainly true of certain personnel but even that personnel to some extent could be trained up to a point—up, say, to a common denominator.

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[fol. 4032] Q. How would you control your training costs if they are in the hands of Pan American?

A. Training course of whom?

Q. Costs, Costs. How would Panagra control the cost of its training program if it is in the hands of Pan American?

A. I think that is a matter that has to be arranged. I think the contract says the details of that training program are to be arranged and we would have to decide on the basis of our past experience and what it was costing others whether the charges we were paying were reasonable.

Q. What I am getting at is reducing the cost of air transportation by economy and efficiency of operation including training of personnel and including maintenance. Don't you when you abdicate, open the door wide to loss of control and the loss of keeping down your costs in the public interest?

A. I don't think so. I am not opening it that wide. I am not giving anybody a blank check.

Q. If the training is 1200 miles away from your operations, isn't it too far away for you to manage that training?

A. But we propose to have supervision of the training and maintenance even though it is 1200 miles away. We have always had an office in New York.

Q. If you are going to supervise the training and maintenance, isn't it better, after all, just to have it in that United States territory and Canal Zone in the first place?

A. That is a matter of opinion but our experience of the Canal Zone—when you speak of the Canal Zone as being

[fol. 4033] United States territory, if you intend to create *is the same* *under* the impression that it ~~has any heading~~ except *as* some technical legal heading ~~to~~ the United States you are creating a totally erroneous impression because it isn't so.

Q. Are you attempting to say that Pan American's flight training and Pan American's maintenance has been efficient and economical, more so than your own?

A. I think the costs of Pan American's maintenance have been less than ours because of certain reasons based on— perhaps they are better than we are. I don't know, but I mean quite apart from arguing over that subject, there are certain factors based on the difference between maintenance in this country and abroad.

To begin with, you have the factor of spare parts, the volume of spare parts that is necessary to carry, when you are operating at a distance from the factories, and where the transportation, especially as it has been in the last few years is uncertain, is a big item, and the obsolescence of those parts is a big item.

It is also true that in the places where we operate mechan-

ies are not to be had by just advertising ~~to~~ them, or sending to an agency and getting them. You have to train your mechanics from the ground up. That involves a great deal of expense in itself. The expense of supervision is an important item, and the overall unit costs, although the hourly wage may be less, seem to work out higher than up here.

Now, Mr. Kirkland will go into that in great detail. It is quite an interesting study.

[fol. 4034] By Mr. Gambrell:

*d*

Q. You are not contending that Pan American's costs for maintenance have been comparable to the costs of Braniff or Eastern or National, are you?

A. I have never made the comparison.

Q. Would you say it would follow from your previous statements here that Braniff ought also to have its maintenance done in the Pan American shops at Miami?

Exam: Wrenn: I don't get the reference to that.

A. I know nothing about Braniff's problems. They have maintenance shops of their own in the United States. They have that advantage to start with that we haven't got. They have got a great big operation. I don't know whether that is applicable to their situation or not.

Q. Going further to the question of joint efforts you, I believe, have provided in here that Pan American shall have exclusive sales representation for Panagra in the United States, isn't that right?

A. That is correct. Not quite exclusive. They have the general agency but there is a provision also that they will designate certain Grace offices as subagents and of course their exclusiveness doesn't mean that they don't use all the travel agencies and all the usual distribution means. They are the general sales agents.

Q. Am I correct in understanding your thesis to be that pooling this personnel training and pooling this maintenance and pooling this sales in the United States, and thereby cutting down any rivalry that might exist between Panagra as such and Pan American as such, is good for the

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[fol.4035] industry in South America?

A. In our particular case, and our particular facts and circumstances, my answer is yes. I am not generalizing in that question. I am dealing with a specific problem.

Q. Would you not recognize, Mr. Roig, that pooling training and pooling maintenance and pooling sales, all tend inevitably to a complacency on the part of these two members of Pan American system—that is Panagra on the one hand and Pan American Airways on the other.

A. Not so long as W. R. Grace and Company owns 50 per cent of Panagra and I draw the breath of life. No complacency at all.

Q. Is there any joint effort on the part of W. R. Grace and Company and Panagra in the way of operations or joint effort or joint expenses in South America, comparable to what we were talking about in relation to Pan American a minute ago?

The Witness: Read the question.

(Question read.)

Mr. Gambrell: If you don't understand it—

The Witness: I understand the question.

Mr. Gambrell: All right.

A. There is a relationship between Panagra and W. R. Grace and Company, yes.

By Mr. Gambrell:

Q. What do they do together?

Exam: Wrenn: Let him finish.

A. Well, it isn't a case so much of doing something together as it is Panagra availing itself of services of W. R.

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[fol. 4036] Grace and Company in connection with quite a variety of matters—traffic, governmental relations, a good deal in the way of legal matters, local customs, and all that sort of thing.

W. R. Grace and Company provides office space in our building. They supply financial and cashiers service, and a great variety of matters of that kind, but I say it is a case where Grace is rendering certain services to Panagra.

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[fol. 4037]

DOCKET 2423

"Pan American Airways Corporation, a Delaware corporation, and W.R. Grace & Co., a Connecticut corporation, owners respectively of 50 per cent of the stock of Pan American-Grace Airways, Inc., and parties to a certain agreement dated July 30, 1946, annexed as Exhibit b to the petition of Pan American Airways, Inc., herein dated August 1, 1946, hereby stipulate and agree as follows:

"1. That they understand and agree that the Board may consider the said agreement in determining any and all issues of this proceeding;

"2. That if the Civil Aeronautics Board shall be of the opinion that either or both of them are necessary

parties to this proceeding, the Board may direct that they may be made parties as from the beginning of this proceeding:

"33. That if the Civil Aeronautics Board shall be of the opinion that the said agreement requires formal approval under the Civil Aeronautics Act, said agreement shall be deemed filed for such approval by Pan American Airways Corporation, and such filing shall be deemed concurred in by W. R. Grace & Co., in the same manner as the agreement between Pan American Airways, Inc., and Pan American-Grace Airways, Inc.;

"34. The foregoing is without prejudice to the right of the parties to argue before the Board that the said agreement does not require formal approval under the Civil Aeronautics Act and that accordingly they ought not be made parties to this proceeding."

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[fol. 4038] A. I don't think there is intended to be any very violent distinction. It is the legal way of saying a thing twice.

Q. Paragraph 10: do you regard this provision for Pan American's being a general sales agent for Panagra as an essential part of this so-called interchange agreement?

Mr. Goseff: It isn't a so-called interchange agreement.

Examiner Wrenn: All right. Strike interchange and call it agreement.

A. I consider paragraph 10 to be an essential part of this agreement, Exhibit A, yes.

By Mr. Gambrell:

Q. Do you feel that paragraph 10 could not be in a separate paragraph regardless of this operating agreement?

Mr. Goseff: It is in a separate paragraph, isn't it?

Mr. Gambrell: Separate contract.

A. You mean assuming that there was or was not, an agreement for through flight service in another paper.

Mr. Gambrell: Yes.

By Mr. Gambrell:

Q. Suppose there is no through flight service contemplated at all. Is there any reason, if this is desirable, this paragraph 10 provision, is there any reason why it couldn't be done in a separate contract?

A. I suppose there are lots of reasons why it couldn't be done and lots of reasons why it could. I suppose it is conceivable that you might work out such an agreement. I don't know. I never tried.

Q. Wouldn't you say that having such an agreement, I

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[fol. 4039] believe covers all the territory in the United States and maybe some places outside, that that tends to restrain any conceivable competition between the service on the East Coast of South America and the service on the West Coast?

A. Well, there are various provisions intended to prevent that. I think it is conceivable, but we were confronted with a practical problem that isn't practical for Panagra to maintain in the United States a sales organization which is in any way comparable with the one that Pan American can obtain.

From a financial standpoint it would be utterly impossible. We felt that the benefits derived from the extent and size of this organization as against what we might otherwise have, were a reasonable offset against that risk, but we weren't content with that, and we therefore put in various provisions to insure adequate Panagra representation and adequate sales offices and adequate Panagra publicity and adequate cooperation and sales methods and sales techniques and all that sort of thing, and all of that is primarily related to Buenos Aires traffic and on that point we also have this possibility of considering a pool.

Q. Wouldn't this arrangement have the effect of reducing the prospects of Eastern Air Lines for developing a large volume of interline business between North and South America in connection with Pan American Airways system?

A. Well, I can't see how, so long as this extends to Miami. As far as it is concerned now going to Miami, a very large part of it moves over Eastern and National anyway. And would continue to do it, I suppose.

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[fol. 4040] Q. Isn't it your view that the preference contained in 9 and the general sales agency contained in 10 would influence wherever possible a movement via some carrier to the New York or Miami gate and then over this route from Miami to South America, the route in question in this case, to the detriment of Eastern, which might be trying to assemble that business and haul it down and turn it over to National conceivably to Havana and then to Braniff for South American points?

Mr. Gesell: Could we have that question read, Mr. Examiner? I don't think I understood it.

(Question read.)

Mr. Gambrell: I will simplify it.

By Mr. Gambrell:

Q. Aren't paragraphs 9 and 10 designed to make more difficult Eastern and other carriers independence of the Pan American system—to make more difficult their developing and hauling business between North and South America?

A. I don't see, Mr. Examiner, that I should concern myself about lines which are not yet in that area. Eastern is not in that area between North and South America at the present time.

Examiner Wrenn: Mr. Roig, let's take the situation enumerated there: A passenger from New York to South America going by Eastern to Miami and then National and Braniff. Take that routing in mind. Can you answer his question?

The Witness: I will say this: It is the object of our sales organization as it is that of Eastern or Braniff or National

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[fol. 4041] or anybody else, I assume, to sell all the traffic

we can cover our own routes. It isn't our object to sell it over other people's routes if we have a competitive one.

By Mr. Gambrell:

Q. And this contract constitutes a compact between you and the largest of all of them to get together and work for each other to the exclusion of others, isn't that right?

A. I wouldn't so characterize it. You can characterize it that way if you like. I wouldn't.

Q. Didn't you state yesterday on your direct before I questioned you at all, that one thing you wanted sure was that Eastern shouldn't go to the Canal Zone, isn't that right?

A. Yes.

Q. And didn't you say that the reason you didn't want Eastern to go to the Canal Zone was that if Eastern got there, that a part of the business south of the Canal Zone would be diverted to Braniff?

A. Well, I say diverted to—

Mr. Gesell: Let's have the page of his testimony. I don't recall his saying that. I recall his saying that the traffic would be diverted to a number of carriers at that point.

A. That is what I said.

By Mr. Gambrell:

Q. Do you deem it in the public interest under 412 or 408 that the Board should sanction this contract with the thought that it would create and maintain a situation that would deny Eastern the right to do business with Braniff?

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[fol. 4042] Examiner Wrenn: You are arguing with the witness. I have no objection to you asking factual questions and bringing such things out but do you have to argue with him and make such characterizations?

Mr. Gambrell: He made that statement yesterday.

Examiner Wrenn: I have no objection to your bringing out the facts but you are arguing with the witness.

Can't you bring out the facts without introducing your own argument there? You are not going to get the witness to agree with your characterization of that.

Mr. Gambrell: I think this is a matter of economic philosophy and traffic science.

Examiner Wrenn: I don't object to your getting all the facts in there but do you have to argue with the witness and use your own characterization of things to get the facts?

By Mr. Gambrell:

Q. Paragraph 10(b) provides that if passenger presents evidence to Pan American that a Pan American employee has diverted or attempted to divert any traffic intended for transportation over Panagra's routes, certain things would be done about it.

What do you mean by the word "intended" there? Intended by whom?

A. Well, it might mean intended by the passenger. That would be the most obvious meaning.

Q. Could it be intended by anybody else?

A. It could be, yes.

Q. In other words, it might be intended by Pan Ameri-  
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[fol. 4043] can or Panagra?

Mr. Gesell: No. That isn't what he said.

A. It couldn't be that, could it?

By Mr. Gambrell:

Q. Who else could it be besides a passenger?

A. Well, I think that you have gradations of expression by the passenger. You might have in the clearest case a passenger who came in and definitely stated he wanted to go by the West Coast, and this case might cover a situation where he had been sold out of that idea, to go down the East Coast.

On the other hand, there are a great many shadings of that. A person might be uncertain which way he wanted to go, but there might be some reasons in the situation where he would more advantageously go by the West Coast, but those advantages weren't pointed out.

The intent is to be very broad, to see to it that nothing is done to result in just the situation that you were concerned about a moment ago under this other clause.

The intention is to be very broad to see that Panagra's legitimate and reasonable traffic moves over Panagra's route and is not interfered.

Q. Suppose that there is a situation where it is obvious that the passenger, to his own advantage, should ride by Braniff or Eastern and National, and this Pan American agent of Panagra makes bold enough to say: "I think you ought to ride that way." Would that be a ground for complaint here?

A. That wouldn't have anything to do with this, no. This

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[fol. 4044] is just between Pan American and Panagra.

Q. Isn't this in effect a provision to police the restraint provided in 10 above? That is to keep all these passengers—

Mr. Gesell: That is an argumentative question, Mr. Examiner. What restraint? There is no testimony about any restraint provided.

By Mr. Gambrell:

Q. If this is an ideal arrangement why do you have to put this policing provision in there?

A. Most ideal states require a certain amount of supervision.

Q. Let's go to 10(c). Is it your understanding that provision means that Panagra can set up any plan of getting business, and Pan American is expected to put it into effect without Board approval?

A. Well, if it were the sort of thing which required Board approval, of course not. It certainly was never my intention that this clause never related even remotely to anything requiring Board approval. It is just ordinary sales practices.

Q. It is between two companies, isn't it?

A. Well, it is between two companies in the sense that

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one is the principle and the other is the agent. When an airline is dealing with a travel agent or with a railroad, or even a steamship line—because after all steamship lines sell a great many air tickets—the airline will prescribe

methods of how they want their business handled. It never occurred to me that that was a thing you had to take up

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[fol. 4045] with the CAB. I thought they were busy on more important matters.

Q. 106(d). Why was Grace' W. R. Grace and Company designated?

A. Well, W. R. Grace and Company has an office—or the Grace Line as a matter of fact—have an office in Radio City, and W. R. Grace and Co. itself has a transportation office in our building on 7 Hanover Square, where we sell a very substantial amount of air traffic.

Q. You sell steamship traffic there also?

A. Yes and we sell air traffic over Eastern Air Lines and a good deal of it. We have very pleasant relations with them, Braniff too, for that matter.

Q. What are the affiliated companies referred to there?

A. I have never found any objection on their part.

Mr. Schneider: Nor will you.

The Witness: Braniff solicited the business only quite recently.

By Mr. Gambrell:

Q. Who are the affiliated companies mentioned in subparagraph (d)?

A. In the case of the Radio City office it would be the Grace Line because that happens to be their office. There might at any time be another. I don't recall another at the moment.

Q. Paragraph 11: What is the purpose of contracting to have the Panagra name displaced at the various Pan-American stations in this country?

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[fol. 4046] A. Well, that is a bit of history. There has been some question between Pan American and Panagra as to the advisability of using that name "Panagra" instead of Pan American Grace Airways, and it was thought advisable to clear up that question by agreeing that we could use the word "Panagra."

Q. Either Pan American Grace Airways or Panagra—why is it essential that that should be displaced at the Pan American office in this country?

A. Well, because in South America Pan American Grace Airways—as a matter of fact, Pan American Airways in many places—is generally commonly referred to as Panagra.

On the West Coast Pan American Grace is always referred to as Panagra, and after all, the people who come into the Pacific office in the United States are in large part South Americans to whom that name is immediately familiar.

Q. I think you misunderstand me. I am not speaking of the condensed name. I am speaking of why should your organization have its name around in the Pan American Airways offices in this country, whether it be Panagra or Pan American Grace?

A. Well, to emphasize the fact that that is the place where you can buy tickets on the Panagra route from Balboa to Buenos Aires or any point in between, the same as we run ads in the magazines to advertise our existence.

Q. You spoke of having business with Braniff. Do you insist upon that in the Braniff offices in this country?

Mr. Gesell: He talked about Braniff having business with him.

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[fol. 4047] By Mr. Gambrell:

Q. You have an interline arrangement.

A. No. Nothing of the kind. All I said about Braniff was that W. R. Grace and Company's transportation department sells Braniff tickets. They sell Eastern tickets. I suppose Braniff and Eastern and all the airlines sell

Panagra tickets on an ~~interchange~~ basis the same as we sell all the other tickets but that is a different proposition.

Q. Is this provision in other parts of this agreement for putting your name in the Pan American offices, is it with the thought of emphasizing a sort of general identity with the Pan American system?

A. On the contrary it is with the object of pointing out the identity of Panagra as a separate entity.

Q. Is it then to give the impression to the passenger that Panagra is in Miami or Panagra is in New York or at Chicago as the case may be? Are you trying to teach the public that you extend all the way into this country?

A. We are trying to sell the public tickets on Panagra *in*

and to make plain the fact that they can get through service on the Panagra plane over the Pan American system to Balboa and our own system from there on, but the through flight, the through service, the one plane thing, we are

trying to emphasize. We have to emphasize it to ~~mean~~ *meet* the competition which is using it against us.

Q. You would feel that it is wrong to give the impression that Panagra comes into this country unless it does?

A. Well, I don't see that we are giving that impression, except by plane. The contract contains numerous provi-

[fol. 4048] sions that that should not be done.

Q. 11(a)—

A. The ticket will show it.

Q. In 11(a) you have provision that Panagra personnel may come and stay in these Pan American stations?

A. Pardon me. What paragraph?

Q. 11(a). You provide that Panagra personnel may come and work in the Pan American stations to assist in the handling of traffic.

A. Yes.

Q. If Pan American's agency is an efficient and competent agency why do you need to have your personnel at considerable expense detached—

Mr. Gesell: There is no testimony about considerable expense.

Mr. Gambrell: Do they work for nothing, Mr. Roig?

Examiner Wrenn: We have had enough of that. Go ahead with the question.

A. This, Mr. Gambrell, is something quite different from what we have been talking about. This personnel is not

in the sales offices. This personnel is in the ports of arrival—let's say, Miami.

Now, the reason that we have that provision is because

*personnel*

we have had <sup>A</sup> for sometime in Miami already, although we have not had any planes coming through, and we have found that it served a very useful purpose. We have passengers that we bring from, let's say, Buenos Aires, Santiago or Lima, and they transfer at Balboa and arrive at Miami.

Many of them speak no English, are wholly unfamiliar

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[fol. 4049] with the habits and customs in this country. They require a special attention which it cannot be expected that any general traffic organization will give them, but which we consider it good business to give from a goodwill angle, and it has been abundantly demonstrated that it pays handsome dividends.

Examiner Wrenn: And that is the purpose?

The Witness: That is the purpose of this: To have these special representatives to give special, extra attention to passengers arriving primarily to take care of these passengers arriving from South America, but we also find it is a very satisfactory thing going southbound, and with American passengers too, they have the question of transferring at Miami to Eastern and National or the railroads and it is a great convenience to have a little personal service and we believe in personal service.

We have built up our business on personal service. Our whole concept of an airline operation is totally different from anything that exists in the United States under that heading.

Examiner Wrenn: I wanted to be sure that I understood you, Mr. Roig. Is it my understanding that this was contemplated only at ports of entry, is that right?

The Witness: Yes, that is right.

By Mr. Gambrell:

Q. It is not in any sense to give the impression to the traveler that Pan American's operations extend into this country—I mean Pan American Grace?

A. No more so than the man we have had in Miami for  
[fol. 4050] the last five or ten years was to give that impression. —209—

Q. Was he to give that impression?

A. No. He was to look after these people.

Examiner Wrenn: Why is it so important anyway, Mr. Gambrell?

Mr. Gambrell: Well, if they are asking the Board to approve it for 99 years, it seems to me we ought to find out what is its purpose. It costs money although Mr. Gesell says it doesn't.

Examiner Wrenn: I don't see why it is so important when as a matter of fact the record shows they do not extend in the United States.

Mr. Gesell: Isn't it time also, Mr. Examiner, that Mr. Gambrell took cognizance of the testimony on the record and the provisions of the statute which make it clear that the Board can disapprove this agreement at any time.

Examiner Wrenn: I don't know. I addressed that question to him yesterday.

Mr. Gambrell: If the approval is not of any effect it seems to me we ought not to spend time getting the approval. There must be some advantage.

Examiner Wrenn: Are you clear on paragraph 11(a)? If so, proceed.

By Mr. Gambrell:

Q. There is no reason, no practical reason, why this arrangement could not be set up as a disassociated arrangement apart from the matter of operating your planes all the way through, is there, Mr. Roig?

A. You mean this matter of a representative?

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[fol. 4051] Q. Yes.

A. Oh, no. As I said, we are doing it now and have for a number of years without this contract.

Examiner Wrenn: Does Eastern Airlines advance the contention that this particular paragraph should be disapproved or there should be a condition attached?

Mr. Gambrell: I am trying to find out what it means, sir, and to find out, of the Board wanted it in, whether it could be handled without the extended service.

Examiner Wrenn: You were talking about paragraph 12.

Mr. Gambrell: Yes, sir.

By Mr. Gambrell:

Q. Without going into the details there, you have provided that the tickets, if possible, shall show that this service is conducted under the particular arrangements made. If this is a clear responsibility of Pan American Airways north of Canal Zone, why it is necessary to explain to the passenger that this plane is rented from Panagra?

A. Well, that isn't quite what this says. I am not quite up to date on this question, but my recollection is that it has been decided that it isn't practical to have that on the tickets anyway.

Mr. Gesell: Mr. DeGroot is the witness on that. He will testify that we are going to continue to use the same tickets precisely as are used at the present time.

Mr. Gambrell: I am not undertaking to say they are right or wrong. I wanted to know why the passenger must be told this.

Examiner Wrenn: All right. Proceed. You have had an

[fol. 4052] answer.

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Mr. Gambrell: I am answering Mr. Gesell now.

Examiner Wrenn: I don't think we need any more answers one way or the other on that. We will proceed.

A. (Continuing) The thought was that if practical, as it now turns out not to be, the ticket should indicate that the plane trip was being made on Panagra aircraft in order to emphasize the fact of through flight service, which is the whole object of the contract.

By Mr. Gambrell:

Q. Look at 12(e). What is the advantage of having Pan American act as tariff and schedule publishing agent for Panagra?

A. Well, we have always done it that way and it has worked out satisfactorily. They have a larger organization than we have to handle that sort of routine work.

Q. Is it because you regard your service as a part of the Pan American Airways system?

A. Well, if you imply anything sinister from that, no. Obviously it is because we are associated that they are willing to do it. I suppose if we asked Eastern or Braniff to do it they would say, "Why should we bother?"

Q. Is it because there is a special effort to coordinate and synchronize your schedules—yours and Pan American's?

A. The filing officers and the filing employers are not the people who decide those questions. That is another question. Whether or not we coordinate schedules depends on traffic policy considerations in which traffic people are consulted, and others also, but this particular thing relates

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[fol. 4053] entirely to a mechanical process of filing schedules and tariffs.

Q. Then you would say that it has no relationship to the fact that Pan American Corporation owns 50 per cent of Panagra?

A. You can draw any inference you like from that. I have explained as best I can.

Q. Paragraph 13: Would you indicate what sort of an agreement is contemplated here—I mean the framework of such an agreement?

A. You are speaking now of "A," the Buenos Aires pool?

Q. Yes.

A. Well, it would relate as indicated to Buenos Aires and Montevideo assuming they were the two common points. I assume it would follow the usual form of a pooling agreement which generally provides for each of the parties to the arrangement carrying at certain percentage of the trade, and if they don't carry it, adjusting the differences.

Now, the percentages of the trade are usually determined by the actual situation as it exists at the time, and the settlement for differences, and this is why pooling agreements do not restrict competition in the sense that it is commonly supposed, because these adjustment provisions

in practice, always work out that unless a line is carrying its percentage of the trade, it doesn't just get a free ride.

When the pooling-agreement is renewed the percentage is reduced so that under a pooling agreement there is a definite incentive to maintain at least your percentage in

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*They*

[fol: 4054] The Witness: We have one.

By Mr. Gambrell:

Q: What?

A: National through Havana.

Q: You think that is adequate?

A: I think it is an outlet. I don't know whether it is adequate or not. Time will tell. It has certain weaknesses,

*not*

Q: You spoke yesterday about wanting Eastern to come in because it would divert traffic to Braniff or give Braniff more traffic.

Mr. Gesell: Mr. Examiner, he did not say that. That is the third time we have had that up. Mr. Röig's testimony is clear. He said when Eastern got to the Canal it could divert the traffic to all the carriers, not to Braniff. He is misrepresenting the statement on the record.

By Mr. Gambrell:

Q: Is it your position that Braniff is not entitled to any traffic moving to and from the eastern half of the United States?

A: I think Braniff is entitled to all the traffic they can get.

Q: But you feel that your company is entitled to a pool that locks it up from Braniff?

A: We don't lock up the traffic from Braniff. We just divide it between the two of us already in the business and who pioneered it. But anybody is welcome if CAB authorizes them to come in.

Q. You seem to have the idea, Mr. Gambrell, somehow, that —222—

[fol. 4055] the whole stage should be set to benefit the people who have never been in the business, never pioneered it at all, who are walking in to skim the cream after somebody else has raised the cow, and that all that should be done at the expense of the people who have been there

all this time, and that the people who were there, have been there all this time do anything to protect themselves and to put themselves on a parity with these newcomers that there is something wrong about it.

A. I don't understand the psychology.

Q. Didn't you state this morning that Eastern had had until recently 100 per cent of the Latin American haul, all of that South American business, north of Miami?

A. I said a few moments ago, that until National came into the field Eastern had such business from that area as moved over Eastern, or moved over air. There was no other airline, but I did not say they had 100 per cent of it.

A great deal of it came by railroad. A lot of it was moving before Eastern was in existence. Pan American and Panagra were moving this service before Eastern went to Miami. It came by railroad.

Mr. Gambrell: Let us check it.

Mr. Gesell: The what?

Chairman Wrenn: We can get the facts without so many characteristics.

By Mr. Gambrell:

Q. You spoke about the fellow pioneering being entitled to it, and that it was wrong for some person to come along and skim the cream. Is it not true that Eastern had 100 per

[fol. 4056] cent of the air carrier haul between Miami and New York up until a year or two ago, over a period of some 15 or 20 years? You can say yes or no on that.

A. By virtue of their being there, and nobody else being there.

Q. And you had virtually 100 per cent of the U. S. flag haul from the Canal Zone south, down the west coast.

Examiner Wrenn: Now you are arguing back and forth.

Mr. Gambrell: No. Isn't that right?

The Witness: Yes.

By Mr. Gambrell: Do you take the position that by reason of your position and Eastern's position you should be the one to provide a service with Pan American in addition to the present Pan American service between the Canal Zone and Florida, in contradistinction to Eastern?

A. All I am asking is that Panagra should be enabled to be in at least an equal position with newcomers, and should have such protection in its—as a result of its pioneering position, as the CAB in decided cases has held that a company in that position is entitled to. Nothing more.

Q. You are not claiming that Panagra is any more of a pioneer than Eastern, are you?

A. Oh, yes.

Examiner Wrenn: I don't care who is more of a pioneer. This has gone far enough. That is enough on that score. Let us have another line of questioning.

Mr. Gambrell: I would like to explore that.

Examiner Wrenn: Go ahead.

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[fol. 4057] Mr. Gesell: You have in mind my continuing motion here to strike this, Mr. Examiner.

Mr. Gambrell: I am willing to strike his remark about Eastern not being a pioneer.

Examiner Wrenn: When we strike his remark we are going to strike the question.

Mr. Gambrell: It is stricken?

Examiner Wrenn: Not yet.

By Mr. Gambrell:

Q. You know that both services were originated about 1928, do you not?

Examiner Wrenn: Mr. Gambrell, what relation does that have to the matter here?

Mr. Gambrell: I want to know myself. He brought it up.

The Witness: You asked the question.

Examiner Wrenn: We will have no more questions on that matter of pioneers.

Mr. Gambrell: He brought out the pioneer subject. I did not bring it out. If you will confine him to the questions we will save a lot of time.

Examiner Wrenn: Will you address another question, please?

By Mr. Gambrell:

Q. Let us look at paragraph 44. Do you regard the provisions of that paragraph as essential to this contract?

A. Yes.

Q. Why?

A. Well, because under them, as I explained before, we [fol. 4058] clear up the matter of the use of the name "Panagra" and we provide for, provide a plan under which Panagra may derive certain definite advantages from Pan American's advertising and publicity, which is very extensive in the United States; for more so than Panagra could provide for its own account.

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Q. Do you feel that that would be—that that arrangement of publicity is designed to get more business for the operations of Pan American and Panagra?

A. Why certainly.

Q. Is it your thought that it will be likely to divert from other carriers in the territory between the United States and South America business which they might get?

Mr. Gesell: That is too general. We will have to know what carriers he is talking about.

By Mr. Gambrell:

Q. Any carriers.

A. Well, I certainly hope that it will succeed in getting business for Panagra. Just as I dare say you and Braniff expect that your advertising will get business for your lines. Braniff has been advertising the route all

over the South American territory on the South American map for almost a year. They have only been certified for a few weeks and they are not yet running it. But it is perfectly legitimate for them to publicize for business. I suppose that is what we spend advertising money for.

Q. Paragraph 15. Why are the Panagra employees exempted in the second and third lines?

Mr. Gesell: Mr. Examiner, these liability and financial

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[fol. 4059] provisions of the contract are going to be covered by Mr. Ferguson and Vidal. I don't want to limit this examination in any way, but since they are going to be discussed in detail with those witnesses, I suggest they are the more appropriate witnesses.

Mr. Gambrell: I am willing.

By Mr. Gambrell:

Q. If this is, in fact, a Pan American operation, north of the Canal Zone, why can't Pan American just assume to pay the crews and other expenses connected with the operation instead of having the bookkeeping routed through Panagra in respect to salaries and other expenses?

Mr. Gesell: Is that a financial question which I thought would be directed to the other witnesses?

Mr. Gambrell: I thought you said—yes; excuse me.

By Mr. Gambrell:

Q. Paragraph 18: Is it your understanding of that paragraph, sir, that if the occasion should arise wherein it might be in the public interest for Pan American to transfer a certificate, say, New Orleans, Merida, Canal Zone route, say to Chicago and Southern, that you want to have here the Board approve a contract whereby you could block such a development?

A. That is not the object of the clause. Again, somebody has to think of Panagra. Everybody else seems to be thinking of everybody else. I am not thinking about blocking somebody else, but I am thinking about seeing to it ~~that~~ <sup>for</sup>

Panagra, the Pan American, keeps itself in a position to render this service to Panagra.

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[fol. 4060] Now, if the Board approves this contract that will be a determination of the public interest in respect to that matter which is the only one before us.

If a new question of public interest comes along, presumably the Board would have to withdraw its approval of this contract, or something of that sort. I don't know what.

Q. You are familiar with Section 401 (i) and Section 401 (k), having to do with the Board's jurisdiction on the transfers and abandonments, are you not?

A. I am not, I am sorry to say.

Mr. Gesell: That is a legal question.

By Mr. Gambrell:

Q. Isn't Panagra willing to leave to the Board's present jurisdiction and its present wisdom the matter of when and if Pan American shall transfer, or abandon a certificate without trying to tie the Board up by decision on that question now?

Mr. Gesell: He has testified, Mr. Examiner, that there was no effort here to tie the Board up; that the Board could disapprove or qualify the approval of this so that it would be free to act in any other case. Mr. Gambrell is putting words in the witness' mouth.

Examiner Wrenn: I think his testimony is clear on that point, Mr. Gambrell.

By Mr. Gambrell:

Q. Is this an essential provision in this contract?

A. Yes.

Q. Do you wish the Board to be bound by its decision on this matter?

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[fol. 4061] A. Well, I expect the Board to be bound by the decision it takes and I expect them to take such decision as they deem wise and qualify it in such form as they deem necessary.

Examiner Wrenn: Let us get what the witness and counsel are talking about.

I may be wrong, but it seems to me like you are speaking at cross purposes.

Mr. Gesell: We thought there was a Section 412 (b) in the Act, which was applicable here.

Mr. Examiner, you asked yesterday about that, and brought no answer from Mr. Gambrell. It is perfectly clear that the Board can disapprove this contract at any time. We have testified to that effect, that we consider, despite the term provisions of the contract—Mr. Roig testified on direct—it was the understanding that the Board at any time could disapprove this arrangement.

Now, isn't it clear? What possible confusion is there on the record on that question? We come back to it and back to it.

Examiner Wrenn: The only point I want to clear up there, if there is any need for clearing, is Mr. Roig's idea of what that particular provision means from the Panagra standpoint.

The Witness: Our ideas, as I tried to state, were to bind Pan American to continue to retain the certificates without which we would be unable to provide the service which is the object of the contract to enable us to provide.

Examiner Wrenn: Thank you, sir.

By Mr. Gambrell:

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[fol. 4062] Q. Let us look at paragraph 19. What right does Pan American Airways, Inc., have to say who shall represent or take the position for Panagra? That is, that should make this provision necessary. I note you have agreed here, in paragraph 19, rather, Pan American agreed, that any action taken by Panagra under this agreement may be taken on behalf of Panagra by its President. Has Pan American Airways, Inc., any control over Panagra; or any rights to designate who shall represent Panagra?

A. It has no control over Panagra, but as a party to a contract with Panagra, I should think it had the right to agree who in Panagra might take action with respect to the specific clauses of that contract, which is what this provides.

Q. I note that the latter part of paragraph 19 saves from that provision General Board action on policy questions, meaning, particularly, among others, purchase of equipment, the establishment of reserves, and the financing of depreciation rates.

Are we to understand that at present Pan American, or Pan American Airways Corporation has the veto power on the question of purchasing Panagra equipment?

A. No, not as such, but the Pan American Airways Corporation owns half of the stock, and naturally is in a position to elect half of the directors.

The import of that provision is that the question of control of this company continues to rest, as it always has, dating back before the Civil Aeronautics Act was passed, and coming along under the grandfather clause, in these

[fol. 4063] stockholders and Board of Directors on this 50-50 basis, and the authority given the President—this is intended to make perfectly clear—is not in any way to effect that question of control.

Actually the authority given the President is merely to inaugurate processes for the determination of questions which might arise under the contract. The President is given no authority to settle these questions. He may inaugurate the processes without risk of deadlock, but the processes are in every case negotiation, or arbitration.

But even those processes are wholly unrelated to the question of control of this company which remains where it always has been.

Q. Parenthetically, reference was made in the paragraph to purchase of equipment. Are we to understand that purchase of equipment is solely a matter for the Board of Directors of Panagra, four of whom are on one side, and four on the other?

Mr. Gesell: There is nothing about sides here. There is nothing about sides in this record at all.

The Witness: Purchase of equipment. By that we mean substantial equipment. I buy small stuff all the time; but when it comes to buying airplanes, that matter always goes before the Directors of this company.

By Mr. Gambrell:

Q. As a practical matter in the operation of the corporation, is it correct that if the four directors coming from Pan American Corporation do not agree to the purchase of equipment, it can not be bought?

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[fol. 4064] A. Theoretically that question would be true, but it has never arisen in our 18 years. We bought several types of equipment; we have had suggestions and discussions about that—I am talking about flying equipment now—we have had discussions about the type of equipment that was best suited. Pan American had ideas sometimes that differed from Grace. We have always decided on the type that was best for our peculiar problems on this operation without any difficulty of any kind.

Examiner Wrenn: Mr. Roig, does paragraph 19 eliminate any possible continuation of that; what you have described as a theoretical condition?

Mr. Gesell: Are you talking about equipment, or the matter in general?

Examiner Wrenn: Equipment:

The Witness: As to equipment, I don't consider that 19 changes the situation as it has previously been. In fact, it expressly perpetuates it. But as I say, it has never been a problem.

Examiner Wrenn: What I was getting at was whether the intent of 19 was to meet a condition of that kind. Your answer is no.

By Mr. Gambrell:

Q. Paragraph 20—

The Witness: Perhaps I might say a little more, Mr. Examiner, in answer to your question.

Examiner Wrenn: Go ahead.

The Witness: While one of the directors of Grace has been designated as President of this company since 1939,

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[fol. 4065] and it is intended to continue on that basis, the President's functions have always been strictly administrative.

He has never been put in a position of control of the company, and it is only through the President that Grace has ever been in any different position than Pan American; and that, as I say, has not been one of control, but merely one of taking on a very laborious job of administration.

any

This contract does not change that, ~~not~~ in a sense. If it changes it in any way, it reduces even the position of the President as it has presently existed, because, in the first place, it provides very clear and specific methods of getting rid of a President.

Up to now the President has been in the position that once in it might be quite difficult to get him out with a 50-50 situation. That difficulty has been removed.

Also, there is a provision which is now in this contract, that the operating Vice President must be subject to the approval of Pan American. So that, actually the powers of the President, which, as I say, are the only things that I can see that can be regarded as having any bearing on this control question, have been actually reduced.

Examiner Wrenn: Thank you, sir.

By Mr. Gambrell:

Q. Let us now go to paragraph 20.

Mr. Gesell: I don't object to questions to Mr. Roig on this, but this is the area concerning the actual court proceedings. I think Mr. Friendly would be a more appropriate witness of what is going to occur. We will leave that to the Examiner.

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[fol. 4066] Mr. Friendly has had the discussions concerning the implementation of that paragraph with the various attorneys and court officials.

Examiner Wrenn: If that is agreeable, we will defer questions to Mr. Friendly; then, if you need Mr. Roig, I assume he will be available.

Mr. Gambrell: I won't ask but a question or two. I would like to ask him now if I may.

Mr. Gesell: It is all right with me.

By Mr. Gambrell:

Q. You helped to negotiate this contract, did you not?

A. Only indirectly, yes.

Q. You signed it?

A. Yes. There is not anything in it, I think, that I am unfamiliar with.

Mr. Gambrell: Off the record.

(Discussion off the record.)

Examiner Wrenn: Go ahead.

By Mr. Gambrell:

Q. I note that you state that the parties will use their best efforts to obtain such approval as expeditiously as possible, approval by the Civil Aeronautics Board.

Have you done anything along that line other than testify here?

Examiner Wrenn: Are you speaking about Mr. Roig, personally?

Mr. Gambrell: Yes, sir.

The Witness: It was simply preparation for the hearing.

By Mr. Gambrell:

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[fol. 4067] Q. Have you discussed this contract with anybody, either in the making of it, or since? I mean, any public official.

Examiner Wrenn: Aren't you repeating testimony questions you asked yesterday afternoon?

Mr. Gambrell: I don't think so.

Mr. Schneider: The question yesterday—I think, if you check the record—was whether Mr. Roig had discussed the interpretation of the Latin American decision and the mandate of that, as to whether this contract met that mandate.

Examiner Wrenn: What is the difference between this?

Mr. Schneider: Quite a difference.

Mr. Gesell: What is the question? Did he discuss the contract with anyone? If so, it is yes. He talked with a

lot of people about that, to Mr. Friendly, and everybody else.

By Mr. Gambrell:

Q. Have you undertaken with any public official to discuss the makeup of the contract, or its being in the public interest, or not in the public interest?

Mr. Gesell: I object to that, Mr. Examiner. I can't see its relevancy to this proceeding at all, who Mr. Roig has talked to, or what he said. What possible bearing has it on this contract?

Mr. Gambrell: I would like to know what he has done to fulfill that obligation, to have it approved.

Mr. Gesell: That is a different question than the one you are asking. The question is what steps Mr. Roig has taken to have this contract approved.

Examiner Wrenn: I don't object to that.

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[fol. 4068] Mr. Gesell: I think that question is pertinent.

By Mr. Gambrell:

Q. Have you discussed it with any public official?

Mr. Gesell: That is the question I object to. I do not see its relevancy here at all.

Mr. Hickey: I think that is relevant. It bears on public interest.

Mr. Gesell: If we are going to go into that, Mr. Examiner, I had not thought of it on the public interest, I think we should make it perfectly clear that there should be called here witnesses from Eastern Airlines and Braniff and the other airlines to discuss the activities of their officials in respect to this matter, and the discussions they have had.

And then, perhaps, I think we should have the various public officials in to bring out what they said about Panagra.

Mr. Hickey: We would be glad to. It all depends on with whom he spoke, Mr. Examiner. It could be quite relevant. It depends on the answer to the question.

Examiner Wrenn: I still don't see the materiality of it. Go ahead and ask him what steps he has taken toward getting this contract.

By Mr. Gambrell:

Q. What action have you taken with respect to this contract in relation to public officials?

Mr. Gesell: That is not the question. I thought the question, Mr. Examiner, indicated what steps had been taken to expedite the approval of this contract. I think that is

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[fol. 4069] the proper question.

Mr. Schneider: And that includes the necessity of the narrow question which Mr. Gambrell asked.

Mr. Gesell: It does not.

Mr. Schneider: It is phrased in general; maybe not specific.

Mr. Gambrell: I asked the question, and Mr. Roig has not answered it. I am willing to ask another question without withdrawing my question.

Mr. Hickey: Before we pass this question I would like to suggest the clear relevance to it. I know this is an impossible situation, but to show the clear relevance: If Mr. Roig had discussed this matter with you, there would be no question about its relevance in this proceeding, would there?

Examiner Wrenn: If you are asking the question of me—

Mr. Hickey: Of course he hasn't, but I am trying to show how material the question is, and why it is relevant for Mr. Gambrell to ask him.

Examiner Wrenn: I can't agree with you on the illustration you used at all.

Mr. Hickey: I am trying to make the illustration as ridiculous as I can to show how clear its relevancy is.

Mr. Gambrell: I will go to another question, not having had an answer to the previous one.

By Mr. Gambrell:

Q. Looking to paragraph 20 (b), I note that you provide that except for paragraph a. of 20 (b), and paragraph 22, which became operative immediately, the agreement is subject to [fol. 4070] the approval of the Board. —237

Now, do you consider that paragraph 20 (a) is now in effect, Mr. Roig?

*under* *Pan American was forthwith to*  
A. Yes, because "a" ~~is under that was to forthwith~~ file application, and they have filed it.

Q. Are you familiar with the language of Section 412 (a) of the Act, which says that "Any agreement for co-operative working arrangement must be filed for approval, and it is subject to the Board's approval?"

A. Yes, that is why we filed it.

Q. Is paragraph 20 (a) a cooperative working arrangement, or is paragraph 22—a cooperative working arrangement?

A. We are in a complete circle now.

Mr. Gesell: Mr. Examiner, Mr. Gambrell knows very well that if all carriers waited for approval under 412, of all agreements filed, before they were acted on, we wouldn't have any airline industry today. People are constantly filing agreements under 412 and proceeding with them, and they do not wait for approval; and that is perfectly well understood.

The Witness: No, but this is just apparently according to Mr. Gambrell; we were supposed to have gotten the Board's approval before filing the application.

By Mr. Gambrell:

Q. You don't think you should have had the Board's approval before you agreed to do everything possible to have this contract approved?

A. No, I don't think so, because that really means the

[fol. 4071] two things there—the only things that are agreed to, to be effective immediately; one is that we agreed that

Pan American would file, and that we will carry the thing through.

Q. You agreed to work in concert to get this thing approved?

A. Yes.

Q. And you feel that that is binding?

A. I would have thought it was.

Mr. Gesell: The customary provision in all agreements of this kind.

The Witness: You have to break in the circle to get started.

Mr. Gesell: It has been proven again and again.

By Mr. Gambrell:

Q. Paragraph 21. Why do you use the expression "as between the parties" there? "This agreement shall be for a term of 99 years." Just the term, "as between the parties".

A. That is the point we had up so repeatedly that we did not assume it would preclude the Board from its right to terminate it any time they saw fit.

Q. I note that you have said in 21 (a) that if at any time subsequent to December 31, 1948, Panagra shall not be satisfied, certain things may happen.

Why did you limit them to action after the end of the year 1948?

A. Well, we thought there ought to be some reasonable trial period, that this involved certain adjustments and there was no point in making a contract that would just be torn up the next week.

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[fol. 4072] Q. You would say the same thing as to the first line in subparagraph (b), I suppose.

A. Yes.

Q. I note at the end of subparagraph (a) you have a three-month's notice provision and at the end of subparagraph (b) you have a one year provision. Why the distinction, giving Panagra a year in which to make amends and Pan American only three months?

A. Well, I must say I have forgotten the considerations  
 that led to that. Perhaps I could recall if I could ~~remember~~  
 read the whole thing over again.

Q. Let us go to paragraph 22.

A. If I recall this afternoon, I will be glad to state.

Q. I note in paragraph 22, in effect, provides that this agreement and the things done in connection with it, and pursuant to it, are without prejudice to the parties if the agreement should be disapproved, or at any time after the agreement terminates. In general, that is the effect of it.

Why do you regard that as a desirable part of this agreement?

A. Well, if the Board should disapprove this agreement, and we had to go back to the legal proceedings, we certainly did not want the effort to arrive at a settlement to be considered prejudicial; efforts and negotiations for compromise and settlement are ordinarily not considered prejudicial, if they don't succeed.

Q. Would that go so far in your opinion as to inhibit Pan American from using the testimony you are delivering

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[fol. 4073] here if it desired to use it in the uncompleted Docket 779, at a later time?

A. Well, that is a legal question. I don't know. But I have no objection except on legal considerations to the use of any testimony I give in any hearing, in any other hearing.

Q. As you understand it, there is no effort here to keep without reach of another proceeding any testimony that might be delivered in this hearing.

A. Well, I say as far as I am concerned, I am not taking *position* any ~~compromise~~ one way or another involving myself in the legal technicalities.

But when I make a statement, wherever I make it, I consider it good at all times.

Q. When you state the truth in this hearing if it is the truth in any other hearing.

A. That is my endeavor.

Q. I notice in paragraph 23 (a) reference to the intention of the parties being to liberally construe this agreement to the end that through traffic will be handled with efficiency.

I suppose that through traffic you refer to as the same through traffic you referred to earlier this morning.

A. Yes.

Q. And it would not include the traffic moving between Eastern's system and Braniff's system via Miami and the Canal Zone gates, would it?

A. It would include such traffic moving through the Miami gate. Yes, precisely; because that—if the Eastern or Na-

[fol. 4074] tional delivered traffic to us at Miami—to Pan American at Miami for destination Lima, Santiago—that would be through traffic.

Q. Back on Braniff, the Canal Zone, Eastern's system in this country, through Miami, and Braniff's system in South America through the Canal Zone, that would be local in your view, wouldn't it?

A. Yes.

Q. Do you know whether Mr. Trippe, who signed this agreement, will be present?

A. It is not the intention.

Examiner Wrenn: Ask counsel for Pan American.

Mr. Gesell: He is not on the list of witnesses. He is in Europe, isn't he?

By Mr. Gambrell:

Q. Mr. Roig, do you know whether he would be available for questions, if called now?

A. I really know nothing about Mr. Trippe's movements.

Q. Looking now to Annex 1—

Mr. Gesell: That is accounting matters, again, Mr. Examiner. That is covered by the same thing.

Mr. Gambrell: Excuse me. I will pass that.

By Mr. Gambrell:

Q. Let us go to Exhibit B for a moment. You did not sign this document, did you?

A. No:

Q. Will Mr. Grace be within reach for questions? I note he signed it.

A. He would be available if necessary. I am thoroughly

[fol. 4075] familiar with it; rather more so than he is.

Q. You stated yesterday that in the making up of these contracts there was a good deal of debating as to whether certain parts should go in one or the other.

Do you remember any particularly important paragraphs that are more or less in the interchangeable status?

A. No. I think Mr. Friendly could tell you about that. I was not personally a party to those discussions. They were discussions rather than debates, I should say.

Q. Do you regard this contract as one of complete mutuality? I note that you say "Under the terms of the agreement it is the consideration of mutual companies."

Mr. Giesell: It couldn't be a contract if there was not mutuality.

By Mr. Gambrell:

Q. Is this a contract in which Grace gets something, and Pan American does not, or vice versa, or do they both acquire rights under this, as you understand it?

A. Well, they both undertake to—well, now, wait a minute. May I have that question again?

Examiner Wrenn: Read the question.

Mr. Giesell: Doesn't the contract speak for itself, as to what rights the parties get under it? It is perfectly explicit. It has paragraphs and says one party undertakes to do certain things and the other undertakes to do certain things. Isn't it perfectly clear when you read it that that is what happens. What does the question have to do with this proceeding?

Examiner Wrenn: I think it is perfectly clear. Let him

[fol. 4076] answer.

(Question was ready the reporter.)

The Witness: I think that the clause which essentially falls within that question is the very first clause under

which they each ratify the other contract, Exhibit A, and each acquire whatever rights and assume whatever obligations that may impose on them, or on their jointly owned company.

Then, going on to the other provisions, they are somewhat regulatory.

Under 3, Pan American undertakes to implement the provision that a Grace director shall be present by undertaking that its directors will so vote.

In No. 4, Grace has the right under certain circumstances to either require correction in the administration of Pan American's sales contract, or if it is not provided—if it is not corrected after arbitration, to secure termination.

There are a number of things. You see them as you go through. Those are the high spots.

By Mr. Gannibrell:

Q. Do you regard ratification by Grace and Pan American Corporation of the Contract A as essential to its binding effect upon parties to Contract A?

A. Well, there are certain contracts that require approval

*There*

of stockholders. ~~A contract~~ used to be, as I remember, an old-fashioned rule that a contract which extended beyond the term of the directors then in office, it would be a good idea to get it ratified by the stockholders.

I don't suppose any of the present directors will live

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*That*

[fol. 4077] 99 years. *There* may have been the idea. I suppose there was a discussion

between the lawyers—they can answer for themselves—but on a contract of this importance, and of this duration, stockholders' ratification was certainly desirable.

Q. And you regard Grace and Pan American Corporation as being bound hereby to exercise their best efforts to see that Contract A is carried out if it is approved by the CAB.

A. Yes.

Q. I note that they inhibit themselves, at the bottom of paragraph 1, from exercising their rights as owner of voting shares in such a manner as to interfere, or impede, the performance of Contract A.

Don't you feel that that tends to restrain what is a desirable freedom on the part of business enterprises to make decisions as they arise, and not to be tied up 99 years in such a manner?

A. Well, what I think—I think when a business decision has been taken, and embodied in a contract, such as this has, and the contract is approved by the Board, that the period for that consideration has ended, and thereafter the primary obligation of the parties is to see that the contract is carried out until, by mutual agreement, they decide to change it.

Q. Do you believe that it is reasonable in an industry that is moving as rapidly as air transportation that two independent, or two separate corporations can foresee so far as with business prudence to make a commitment for 99 years?

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[fol. 4078] A. That is the reason that we put in the provision over in Section 23 of the "A" contract, that it was the intention of the parties that the contract should be broadly and liberally construed to contemplate technical, international and regulatory developments in the field of air transportation, to the end that through traffic be handled to the maximum efficiency, and in a manner to meet changing competitive conditions.

Q. Suppose it should be concluded in the minds of regulatory bodies having jurisdiction that the Pan American system ought not to operate on the west coast of South America, and the east coast, too. Would you regard this contract as in anywise being an obstacle to some proceeding, to make the west coast service of U. S. flag utterly independent of the Pan American system?

Examiner Wright: What statement—

The Witness: The contract has nothing to do with that situation at all.

Mr. Gossell: I can't follow that question.

Examiner Wrenn: What do you mean by an obstacle? Obstacle to whom?

Mr. Gambrell: Would it interfere with the Board initiating such a move, or any other public body?

Examiner Wrenn: Is this witness the one to ask what will interfere with the Board's power and on the Civil Aeronautics Act?

Mr. Gambrell: I am trying to find out what this contract means.

Examiner Wrenn: Do you content that a contract be

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[fol. 4079] tween these parties can restrict the action of the Board under that?

Mr. Gambrell: It seems to me that the Board's sanctioning a contract gives a pretty weighty moral sanction to it that might upset the Board later.

Mr. Gesell: Mr. Gambrell is not on the Board. It is perfectly clear that the Board has authority to disapprove it. We have gone through that.

Examiner Wrenn: I don't see what materiality your question has as to the power of the Board, Mr. Gambrell.

Mr. Gambrell: We will pass on to the next paragraph.

By Mr. Gambrell:

Q. Regarding the representation of Panagra in paragraph 2, your comments would be similar to what they were in respect to the comparable paragraph in the other contract, wouldn't they?

A. Yes. You mean the action by the President?

Q. Yes.

A. Yes.

Q. Paragraph 3. Does that mean, as you understand it, that if W. R. Grace and Company continues to nominate you as President, Pan American is expected to support that nomination?

A. Pan American always has the right to approve the Grace nomination with the proviso that the approval shall not be unreasonably withheld. If at any time Grace nominated me or anyone else, and Panagra did not approve, and the approval were—

Mr. Gesell: Pan American.

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[fol. 4080] The Witness: —Pan American did not approve, and the failure to approve were found to be reasonable, they would be under no obligation to go ahead.

By Mr. Gambrell:

Q. Is the second sentence in paragraph 3 a fair definition of the duties and authority of the President? It says, "The president of Panagra shall be in responsible charge of its management." That is the second sentence.

Is there anything else in that contract, or any other contract that should be considered in connection with the President's power, or authority?

A. Yes. I think there must be considered in connection with that proviso in the other contract that policy and control rests in the Board of Directors, and not in the President.

Q. Paragraph 4. Doesn't this paragraph, in effect, provide that the holding company, Grace, can, under certain conditions, require that a contract, Contract A, to which it is not a direct party, may be amended? Isn't that the effect of it, that Grace, under paragraph 4 here, and under certain conditions, require that contract A be changed?

A. That wouldn't be my interpretation.

My understanding of 4 is that Grace may demand performance by Pan American of certain obligations which it has undertaken under another contract, and failing such performance by Pan American, may take the matter to arbitration, and failing such performance by Pan American, if the arbitrators sustain the Grace position, terminate the other contract.

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*given*

[fol. 4081] The reason for Grace being ~~given~~ that being put in that position is obviously to have somebody who can act without any risk of deadlock.

Panagra might not be in a position to take that action, itself because of the fact that Grace does not control Panagra.

Q. You note that reference is made in this paragraph 4 to Contract A, and that previous paragraphs in Contract B refer to Contract A.

Wouldn't you say that in paragraph 4, and other references to Contract A, make it essential that the two of them be considered as inseparable and more or less one ball of wax, as someone said yesterday?

A. I don't know what the legal implications are of that. I take them together. But actually this contract is a complete contract in itself.

Examiner Wrenn: Which contract?

The Witness: "A".

By Mr. Gambrell:

Q. In your opinion—

The Witness: The whole operation would not be quite the same. It ~~would~~ could be dropped out. But it would be workable.

By Mr. Gambrell:

Q. Is "B" essential to the practical approval and putting into effect of "A"?

A. To my mind, as a practical businessman, it is.

Q. Let us look at 5. I note there that if these Pan American routes, which may be thought of as tracks for

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[fol. 4082] operation in this case, if any one of them should be canceled, or disposed of in violation of paragraph 18, Contract A, I note that there is a provision that Pan American Corporation will consent to Panagra's making application to amend Panagra's own certificate so as to include the route which formerly Pan American held, but which now, under the supposition is eliminated.

Why was that provision put in?

A. That was put in so that in the event that Panagra's through flight service, under Contract A, was unable to function, Panagra would then be in a position, without any risk of deadlock, or anything of the kind with its

Board of Directors, to apply to this Board for a route in its own name.

Q. In the preliminary paragraphs of the petition for approval of the contract A, I note reference to the fact that these contracts are designed to settle differences.

Are we to understand that paragraph 5 of Contract B settles the difference about locked Board of Directors in relation to new route applications?

A. No. Only in respect of this one situation referred to in that paragraph. It has no relation to any other situation that might arise.

Q. Does it purport to settle the so-called deadlock reflected in Docket 779?

A. Not in this particular agreement, but the whole thing definitely does settle.

Q. Contract A and Contract B, do they, if approved, do they settle the deadlock referred to in Docket 779?

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[fol. 4083] A. They definitely do, because the issue in 779 was whether or not Panagra should be extended to the United States. That was the deadlock which led to that proceeding. That controversy has been settled by this arrangement under which through flight is provided under the terms of this contract.

Q. Let us explore that a minute. When you say "settled" what do you mean?

A. Well, I mean—

Q. In practical effect.

A. I mean that it is settled by mutual agreement in the terms of these contracts.

Q. Does it mean—do you mean that it is settled in that a different way out is provided?

A. This is a different way out, yes.

Q. Does that imply that the original extension is no longer contemplated, and is not to be sought?

A. Yes.

Q. By Grace management?

A. It implies that, yes. It doesn't so expressly provide, but obviously this is a substitute.

Q. That from here on out those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States.

A. I did not so testify, and that is not the fact. The only agreement between us on that point is in these papers.

Q. You said it settled it.

A. No. I said it was a fair implication. After all, you

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[fol. 4084] don't keep on running after the trolley after you got aboard, and we have accepted this, at least for the moment, and as far as I can see, for a good long time. I hope so.

Q. For 99 years.

A. I hope so, as a settlement of this controversy.

Q. Do you apprehend that if this contract is approved and put into effect, these two contracts, that W. R. Grace and Company will be agitating for the extension of Panagra to the United States?

*apprehend.*

A. No, I do not so ~~hope~~.

Q. Do you anticipate that the persons who manage Panagra, meaning Mr. Roig and his Vice Presidents, themselves, will cherish as they have in the past a feeling that Panagra ought to be extended to the United States?

A. No, because before I agreed, and the rest of us agreed to go into this contract, the matter was very fully ventilated with all of the chiefs of Panagra, some of whom will testify, to make sure that they felt that this was a reasonable compromise of that question.

Q. Paragraph 6 of Contract B.

Examiner Wrenn: Are you about finished, Mr. Gambrell?

Mr. Gambrell: Off the record.

(Discussion off the record.)

Examiner Wrenn: We will recess until 2 o'clock.

(Whereupon, at 12:35 p.m., a recess was taken, to reconvene at 2 o'clock p.m., same day.)

[fol. 4085]

AFTERNOON SESSION

2 p.m.

Examiner Wrenn: Please come to order.

Mr. Gambrell, you may continue your examination.

Harold J. Roig, resumed the stand, was examined and testified further as follows:

Cross examination (Continued).

By Mr. Gambrell:

Q. Let's look at paragraph 6 of contract B.

A. Yes.

Q. Is it your understanding that if these contracts are approved and put into effect they will dispose of the pending cases therein referred to which I assume are the ones enumerated in paragraph 5 of the petition—that is, at least 707 and 744 and 779.

A. That is my understanding.

Q. I will not ask you about 7 and 8 because I assume your answers would be the same as to corresponding paragraphs in the other contract?

A. Yes.

Q. Paragraph 9, like paragraph 25 of the "A" contract has to do with arbitration. Is it your opinion that arbitration is a workable and practical provision for potential disputes such as contemplated here?

Mr. Gesell: Nothing about disputes being contemplated here, Mr. Examiner.

A. Well, as limited, to relate to disputes as to the construction or operation of this agreement, I think it is quite workable.

[fol. 4086] By Mr. Gambrell:

Q. Has your experience with arbitration in connection with the relationship between Panagra and Pan American Corp. been satisfactory?

A. We have never had one.

Q. Didn't you have an arbitration agreement in your 1939 contract?

A. Yes, but we never had an arbitration under it.

Q. Well, you have had a good deal of the dispute didn't you?

A. We did have a good deal of conversation about whether or not there should be one under it.

Q. You had a lot of disputes that needed settlement, didn't you?

A. No. Not of the character that—

Examiner Wrenn: Did the disputes relate to the subject matter covered by the arbitration agreement?

Mr. Gambrell: Well, as far as I can see the arbitration provision—

Examiner Wrenn: Let the witness answer that question. If they did all right, I am willing to have him elaborate on it. If they didn't I think that takes care of it.

hear

The Witness: Let's ~~here~~ the question again.

Mr. Gambrell: I thought the Examiner asked the question.

Examiner Wrenn: That is what I mean. I want to know if the disputes you referred to fell within the scope of the arbitration agreement in the 1939 agreement.

The Witness: Well, the discussions about arbitration

[fol. 4086] under the 1939 agreement related to whether or not we should arbitrate the question of whether or not Pan American's connecting service was adequate, and therefore whether or not Panagra should file an application for a route. That question, owing to a great variety of reasons, did not seem to me susceptible of arbitration. It was a very different kind of question than the questions involving controversy and interpretation of a specific contract like this.

By Mr. Gambrell:

Q. Didn't you have many other disputes not relating to the extension of Panagra which were within the purview of your 1939 arbitration provision where you didn't arbitrate?

A. Any disputes that we had of that kind we settled among ourselves. In one instance we did get to the point of endeavoring to draw an arbitration agreement and the appointment of an arbitrator was agreed on and arbitrated and at that point we settled the matter ourselves. We settled all our problems except this one.

Q. Will you state whether in your opinion arbitration for the matters referred to in the 1939 contract was a successful means of adjustment?

A. No. I can state the facts. I can't draw the conclusion because we didn't, except in one instance, get anything up to the point of arbitration.

We settled them ourselves.

As a means of settling the question of Panagra coming through to the United States it was not a successful provision in my opinion.

Q. I will pass on and come back to that in prior testimony [fol. 4088] that I want to bring to your attention.

Paragraph 10, contract B, the contract of February 14, 1939, is the one that has been attached as Exhibit 29 to the Pan American-Panagra exhibits, is that right—same one?

A. Yes. The one we had here yesterday morning.

Q. Will the taking effect of this contract B completely terminate that contract and have it no longer effective in any way?

A. No. There will still remain the question of determining what services Grace and Panagra are to render for this company and the basis of payment for those services. It was contemplated that that will necessarily be subject to revision in the light of provisions of this contract.

Q. But I am speaking of the 1939 contract. That goes completely out when contract B takes effect?

A. As a contract it is out, yes but I am stating that certain states of fact which exist and which came to light to some extent to existence in part under that contract must go on outside of the contract until they are reorganized.

Q. Is there any other working contract between Grace and Pan American Corp. or Panagra or Pan American having to do with the policy making and operation of Panagra?

A. I don't think of any.

Q. Wasn't there a contract of 1928?

A. Oh, that famous letter.

Q. Well, whatever you call it. Is that a dead letter or is that a live document now?

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(fol. 4089)

#### PROCEEDINGS

Examiner Wrenn: Please come to order, gentlemen.

Mr. Gesell: Mr. Examiner, I have a stipulation to propose.

We have considered, over the evening recess, the problems which were discussed here yesterday, having in mind particularly the suggestion of the Examiner that some effort be made by way of stipulation to meet the problems presented by the efforts of the other parties to introduce portions of Docket 779.

We feel, as we expressed, yesterday, that material from that docket is irrelevant and immaterial, but we recognize that under the rulings of the Examiner and the procedure that has been adopted by the parties that in the long run most of this record is going to find its way, on some basis, into the record of this proceeding, and accordingly, we have a stipulation to propose which we think will accomplish that more expeditiously and at the same time assure a more complete record.

We hope also that the stipulation will serve to expedite this proceeding and facilitate consideration of the issues of public interest presented by the contract which has been filed.

I would like to read the stipulation for the record and I have copies here which we will distribute to counsel so that they can study the wording.

The stipulation will read as follows:

"It is hereby stipulated and agreed by the parties that for the purpose of this proceeding all exhibits and testi-

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[fol. 4090] mony received in evidence in CAB proceeding known as Panagra Terminal Investigation, Docket No. 779, shall be deemed to be offered in evidence in this proceeding by all parties, except Pan American Airways, Inc. and Panagra, as part of their direct cases and received in evidence by the Examiner over the objections of Pan American Airways, Inc. and Panagra; provided that Pan American Airways, Inc. and Panagra shall each be entitled to renew their objections at any stage of this case to the introduction of any or all such exhibits and testimony upon any grounds (except authenticity) including materiality, relevancy or otherwise, and to contest the probative value and scope thereof in the same manner and to the same extent as if such testimony and exhibits were being offered originally in this proceeding, and provided further that Pan American Airways, Inc. and Panagra shall be granted the right to file reply briefs."

One further thing concerning the stipulation: Of course, if Pan American Corp. or Grace are found to be necessary parties to this proceeding; or ordered to be parties by the Board under the stipulation which is already on file, presumably the rights to object to this evidence at any stage in this proceeding would be rights which they would have as well as Pan American Airways and Panagra.

I would be glad to answer any questions concerning the stipulation which any counsel or the Examiner may have.

Mr. Schneider: Mr. Examiner?

Examiner Wrenn: Yes, Mr. Schneider.

[fol. 4091] questions that are raised by 779.

Mr. Gesell: That is right.

Mr. Schneider: Simultaneous filing of original briefs and simultaneous filing of reply briefs for all parties.

Mr. Gesell: That is right. That is what I mean.

Mr. Gambrell: Is there going to be any limit on the length of those briefs.

Examiner Wrenn: I presume the Board's Rules of Practice of 50 pages would apply.

Mr. Gambrell: 50 pages would apply to all of them.

Examiner Wrenn: That is the way the Rules of Practice provide.

Mr. Gambrell: If that be so, in view of what Mr. Gesell has said, I think that Eastern would be willing to go along on this.

Mr. Schneider: Let's amend the last two lines to cover your point and we are all set.

Mr. Gesell: Isn't it clear on the record that it is amended and that the agreement of the parties to the stipulation was on that condition.

Mr. Schneider: He has copied the other one. I would rather have it drafted correctly and put in.

"Provided further that all parties shall have the right to file simultaneous reply briefs."

Mr. Gesell: Limited to the issues raised by Docket No. 779.

Mr. Schneider: I accept that.

Mr. Gesell: And I think we ought to have the time period clear. We suggest ten days because I think if we

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[fol. 4092] are going to have reply briefs we ought to understand what the time limit is. It is understood it is ten days, isn't it?

Examiner Wrenn: It is understood it is ten days.

Mr. Highsaw: Mr. Examiner, public counsel is raising no objection to the agreement between the parties that has been reached as amended. However, public counsel would like to pass somewhat of a different position from the other parties. I would like the record clearly to reflect the fact that Public Counsel does not raise any objection to the

Stipulation is agreed upon, does not in any way reflect the fact that the Board may be bound to receive and grant the reply briefs that are so stipulated.

Examiner Wrenn: Let's make that understood.

Mr. Gesell: I understand public counsel isn't going to oppose this question of reply briefs. It has been one of the most ardent persons in getting 179 before us. He is not going to oppose reply briefs.

Mr. Huldsaw: That is correct public counsel is not going to oppose it but public counsel doesn't want the fact that he has not made any objection to the stipulation to be used as an argument that the Board is thereby bound to grant the reply briefs.

Examiner Wrenn: We will consider the stipulation agreed to and I want to express my appreciation to counsel for Pan American and Panagra for their efforts in working out their cooperation in working out the solution to this problem which has been before us.

Mr. Gambrell: Is the stipulation going to be filed?

tel. 4063 - Examiner Wrenn: The stipulation was read in the record.

Mr. Gambrell: Amendments, I meant to say.

Examiner Wrenn: Amendments, yes, as proposed by Mr. Schneider and Mr. Gesell.

Mr. Gesell: Mr. Examiner, I want to raise one question, the Department of Justice isn't here.

Examiner Wrenn: Yes, Mr. McFarland.

(Discussion off the record.)

Henry J. Reig, resumed the stand, was examined and testified further as follows:

Examiner Wrenn: Let's proceed with the examination of the witness, Mr. Gambrell.

Cross examination (Continued).

By Mr. Gambrell:

Q. Mr. Reig, as we closed yesterday, we were discussing Mr. Parchin's memo. It is now in and I won't burden you further with questions on that.

In your direct you mentioned a series of meetings and conferences leading up to the formulation of these contracts A and B. Were you in substantially all of those conferences?

A. Do you mean the conferences during which the agreement was being formulated?

Q. Yes. The framework was laid and the basic principles outlined.

A. No. I was not present at those conferences, with, I think, one exception. The conferences I think I testified were between Mr. Friendly and Mr. Gesell.

Q. Didn't the top executives of the company lay out [fol. 4094] the framework and tell the lawyers to get busy and put it in form?

A. No. I testified quite fully on that, I think, the other day. It was quite the opposite. I stated at the outset that I could not accept the proposal in principle, that I could only look at it in detail after it had been worked out, and these other gentlemen worked it out. It was only then that it was accepted.

Q. And those negotiations did not commence until after the Board's decision in Docket 525 in the Latin American case?

A. That is correct.

Q. You started with a clean sheet after that.

Mr. Gesell: Clean or a dirty sheet, Mr. Examiner. *This is the*

Third time we have testimony that this started after the decision in 525.

Examiner Wrenn: I think that is clear from the record, Mr. Gambrell. I think you will find it on page 61 of the transcript.

Mr. Gambrell: Some statement but I submit that if Mr. Gesell had a direct examination on this I am entitled—

Examiner Wrenn: We have settled that question now. Let's don't get back to it in this question of arguing between counsel.

Mr. Gambrell: If Mr. Gesell will attend to his examination I will attend to mine.

Examiner Wrenn: I beg your pardon. I am sorry what was that remark?

Mr. Gambrell: I said if Mr. Gesell will attend to the [fol. 4065] direct examination I will attend to the cross. —354—

Examiner Wrenn: You attend to your cross examination and we will take care of Mr. Gesell.

By Mr. Gambrell:

Q. Did you have a carry over of anything from preceding negotiations or did you start without any nucleus after the Latin American decision?

A. We had behind us the longstanding difficulty presented by 779 and it was that difficulty that we set out to settle. We didn't start with any—you mean did we start with any such abortive agreements, suggested agreements, as we were discussing yesterday, we didn't start with any of those.

Q. Would it be possible to supply for the record copies of all minutes of board meetings or committee meetings of Panagra and of Grace and of Pan American Corp. and of Pan American relating to the composition or formulation of these two agreements.

Examiner Wrenn: Now, that has in mind since the date of the decision in 525.

Mr. Gambrell: Yes. Now, I am asking for that.

Mr. Gesell: We will be glad to submit those as far as Panagra and Grace are concerned. I am sure that is what this witness has control over.

Mr. Gambrell: Would it simplify if I could ask the same question in respect to—

Examiner Wrenn: Go ahead. The same question in respect to Pan American.

Mr. Gambrell: That will apply to Pan American Corp. [fol. 4096] and Pan American. —355—

Mr. Hamilton: That is right.

Examiner Wrenn: We are clear on that. That is minutes and so forth relating to this particular contract, Exhibits A and B.

By Mr. Gambrell:

Q. Could that include memoranda in the files of those companies addressed to this subject and to correspondence in the files of those companies addressed to this subject?

A. There was no correspondence so far as I know anything about. So far as I am concerned there were no memoranda that I recall.

Q. Could we agree that if there is correspondence or if there are memoranda that will be included in this request?

A. I will not so agree.

Mr. Gambrell: Decide that?

Mr. Gesell: I will have to have a much better idea of what Mr. Gambrell wants.

Mr. Gambrell: Anything in writing in the books and records of those four corporations addressed to this subject.

Mr. Gesell: What subject?

Mr. Gambrell: The subject of making these two agreements.

Mr. Gesell: I am not clear what he is talking about.

Examiner Wrenn: Can you identify it a little further? I see no reluctance on the part of counsel to give what is necessary here but I do think they are entitled to have a specific identification for it.

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[fol. 4097] Mr. Gambrell: We have agreed on certain things.

Examiner Wrenn: That is right. The minutes of the four companies.

Mr. Gambrell: Minutes as to Board meetings and directors meetings.

Examiner Wrenn: Yes, that is right.

Mr. Gambrell: Now, I would like all writings, including so-called memoranda, or correspondence in the files of any of the four companies, having relationship to the composition, formulation, or execution of these documents, these two contracts, and having to do with getting in motion and prosecuting their petition for approval of these two contracts.

Mr. Gesell: None of that material was requested. Mr. Examiner, at the pre-hearing conference, when things of this sort are supposed to be worked out between the parties,

I can't see the relevance of submitting here at this proceeding if there are such documents. I don't know what there are—we would have to look—concerning various suggestions by different people as to how a particular clause should be written in this contract.

Matters of that sort seem to me to be washed out when you present an agreement. That is the agreement and understanding between the parties, and suggestions made in negotiation about how a contract should be formulated is certainly not relevant to any issue at all. I don't see its materiality.

Mr. Gambrell: It seems to me that a document of this sort is comparable in a way to an act of a legislature and that the history of the document and the memoranda and working notes and correspondence form a background that

[fol. 4098] is very essential to an understanding of the meaning of the contract and the objectives sought to be attained.

Examiner Wrenn: You don't have any testimony in the first place that there is anything of that kind.

Mr. Gambrell: No, we haven't. I have asked if it could be supplied if there is anything of that sort.

Examiner Wrenn: Are you addressing a request to me?

Mr. Gambrell: Well, maybe I should ask if counsel for the contracting parties decline to supply it. Do they?

Mr. Gesell: Certainly Panagra declines to supply it.

Mr. Hamilton: Pan American does too.

Mr. Gambrell: We would like to take under consideration filing a form of subpoena duces tecum for that material and would ask that it be not disturbed until such a document is filed, that everything be preserved.

Mr. Gesell: Mr. Gambrell can be assured that if there is any material it won't be disturbed.

By Mr. Gambrell:

Q. Did the same negotiators work on both contract A and B, or were there different negotiators?

A. The same.

Q. Did Mr. Trippe or Mr. Grace personally participate in any of the conferences or negotiations on this subject?

A. There was one meeting—I said a moment ago that I attended one meeting—and Mr. Trippe was present at that meeting.

Q. What meeting was that?

A. That was a meeting after the contract had advanced to a certain point at which several of the principals met

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[fol. 4099] with the lawyers.

Q. It wasn't a board meeting?

A. No.

Q. It was just a conference of interested persons?

A. Oh, yes. It was some representatives of both sides. Mr. Trippe is not a member of our Board.

Q. Where was it held?

A. Held at the Cloud Club.

Q. That is on top of the Chrysler Building?

A. Yes.

*about*

Mr. Gesell: Just ~~above~~ on top.

Mr. Gambrell: I will be glad to wait until Mr. Gesell finishes up.

Examiner Wrenn: Proceed.

Mr. Gambrell: I move to strike out Mr. Gesell's remark.

Mr. Gesell: I concur.

Examiner Wrenn: All right. It will be stricken.

By Mr. Gambrell:

Q. What considerations were advanced as to why the contracting parties or any of them should recede from former positions taken with respect to interchange?

A. There were no considerations advanced because it was never suggested as far as—I mean no consideration as far as Panagra was concerned, for any change because there had been no change on our part.

Q. Did Mr. Trippe or anyone else representing the other side indicate any reason why they were receding from any position they had previously taken?

A. At the meeting I referred to, the matter was not [fol. 4100] discussed. (The only expression I can recall at this moment being made to me by anyone connected with Pan American on that subject was the statement Mr. Friendly made at the meeting when the proposal to endeavor to work this thing out was made, and I replied at that time that I would not be interested in proceeding along any such line as we had discussed at the time that G-58, I think, was before us, and he stated at that time that was not their intention to proceed along that line, that he considered that the way that discussion had developed had been unfortunate, because he recognized that it had not, as I have testified repeatedly, developed along the lines which we had originally contemplated—at least he and I had contemplated.)

Q. Do you, as a part of your functions as Vice President and Director of W. R. Grace and Company—Co-Vice Chairman of its Board—do you help to formulate the general policies of that company?

A. Yes.

Q. Do you likewise help to formulate the policies of Grace Lines, Inc., the shipping company, its wholly-owned subsidiary?

A. I am a director of that company, and to that extent, yes.

Q. Is it still the position of W. R. Grace and Company that the public interest would be served by Pan American's divesting itself of sufficient of its stock so that it could not exercise negative control over Pangra?

The Witness: Just repeat that question please.

Examiner Wrenn: Read the question.

[fol. 4101] (Question read)

A. No.

By Mr. Gambrell:

Q. You are not of the opinion that it is in the public interest, or would be, for Pan American Corp. to have its interest reduced below 50 per cent?

Examiner Wrenn: You are speaking to Mr. Roig's personal opinion now?

Mr. Gambrell: Yes, sir.

Examiner Wrenn: All right.

A. No, I don't.

By Mr. Gambrell:

Q. Didn't you at page 1014 of the Docket 779 transcript, testify as follows:

A. Could I see it please if we are going into that record?

Examiner Wrenn: That record has all been stipulated in here.

Mr. Gambrell: I want him to reconcile his view.

Examiner Wrenn: You have got his view here. He has stated he doesn't any longer hold that opinion. Ask him why he doesn't if that is your point.

Mr. Gambrell: I have got a right to—

Examiner Wrenn: You have got it in there. Do we have to physically repeat all of that in this record now?

Mr. Gambrell: He contradicts himself.

The Witness: I am perfectly willing to admit that on previous occasions under different circumstances I have held a different view and I am perfectly willing to give my reasons for changing.

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[fol. 4102] Examiner Wrenn: Go ahead.

By Mr. Gambrell:

Q. You stated previously that you thought it was desirable that Pan American should divest itself of negative control, didn't you?

Examiner Wrenn: He has just stated that he did.

Mr. Gambrell: He hasn't. He made some generalization. Mr. Examiner, I am trying to be specific.

Examiner Wrenn: I am going to rule he has answered the question. Go ahead.

Mr. Gambrell: I submit that the witness has not answered my question and the Examiner has not answered my

question and that I am not getting a fair trial here, Mr. Examiner.

Examiner Wrenn: Mr. Gambrell, those facts are not borne out by the record whatsoever.

Mr. Gambrell: He said I may have made a statement somewhere. He didn't say he had.

The Witness: I did not say I may have made a statement. I said that I had previously entertained the view that it would be in the public interest for Pan American to be divested of part of their stock, that I no longer entertained that view and that I was perfectly willing to explain my reasons why.

Anything that I said in 779 is in the record and I stand by it.

By Mr. Gambrell:

Q. Will you now explain why you have a different view?

A. Because the problem which led me to believe that that

[fol. 4103] would be desirable has been solved by these contracts.

Q. And what was it?

A. Back in the 60's we had a war between the states. The South wanted to withdraw. The matter was settled.

has

and it stayed settled for 80 years—not quite 90—and the

fact that you had this agreement and the settlement naturally changes your viewpoint.

Q. Well, you have said that these contracts settled it. How do they make your view on that subject different? Why do they?

A. Because the one outstanding problem, and my testimony in 779 will show that I testified the same way then, between Pan American and Panagra has been the question of extending our route to a terminal in the United States. I say the one outstanding problem. I mean by that the one outstanding problem that hadn't been settled. We have had other problems. We are an active company. We have an active live board of directors. We are not a one-man show.

We have constant discussions in our board of directors as every healthy board should have, but every question that has come up, all the questions discussed in 779, except that one question, were resolved and determined, and these contracts have now settled that question.

Examiner Wrenn: And therefore you have changed your views?

The Witness: I see no occasion for continuing a battle after the war is won.

Examiner Wrenn: All right, sir. Do you have any further questions, Mr. Gambrell?

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[fol. 4104] Mr. Gambrell: Yes, sir.

By Mr. Gambrell:

Q. I want to call your attention to Docket 779, Exhibit P-35, page 27, which is a letter from W. R. Grace and Company to Mr. Garni and Mr. Roig, dated June 17, 1941. I want to call your attention in particular to one paragraph:

"We furthermore feel that you should consider carefully the advisability of issuing further stock and of offering this stock to us in order that our government—"

Mr. Gesell: This is in evidence. Can't the witness just read it, Mr. Examiner?

By Mr. Gambrell:

Q. — "our government may have two distinct entities to deal with—"

Examiner Wrenn: Mr. Gambrell, let the witness see the document.

Mr. Gambrell: I am halfway through a question that I would like to resume if it is possible to do so.

The witness: Am I permitted to read the letter? I don't think it is occasioning any delay.

Mr. Gambrell: I thought I would ask him the question and then let him look at the document and answer it. As it is, I will have to start it over.

Examiner Wrenn: Let him read the letter.

The Witness: Yes, sir.

Examiner Wrenn: All right.

Now, your question, Mr. Gambrell.

Mr. Gambrell: May I borrow my book back sir?

Examiner Wrenn: All right.

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[fol. 4105] By Mr. Gambrell:

Q. I call your attention to the third from the last paragraph of the letter. I will read it and ask you if that expresses a view narrowed to the matter of extensions:

"We furthermore feel that you should consider carefully the advisability of issuing further stock and offering this stock to us in order that our government may have two distinct entities to deal with and in order that the question which has constantly arisen as to the interest of your company being made subservient to that of the Pan American Airways Corp. interest, may be definitely removed."

Was that complaint there of constant subservience, confined to the extension of Panagra to the United States?

A. That was a letter written by Mr. Iglehart. It was not written by me, and expressed his views which were not always in accordance with my own on these subjects.

Q. He was the top executive officer of the company.

A. Of W. R. Grace and Company, he was President at that time.

Q. Was he on the Board of Panagra at that time?

A. He was never on the Panagra Board and it is my definite feeling that that paragraph was still, while it is broad in its language, related primarily to this outstanding problem as the rest of the letter, I think, indicates.

Q. Is it your feeling that all of the matters complained of in Docket 744, by W. R. Grace and Company against Pan American Corporation and others will be fully settled and all friction removed?

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[fol. 4106] A. I think you mean 779.

Q. No. 744.

A. 744.

Q. Yes, sir. Where Graco complained generally about Pan American's exercising its half-interest in Panagra in such a way as to thwart its development, interfere with its progress.

A. Do you consider that this contract removes all points of friction?

A. It doesn't remove the points of friction that are always inevitable among strong minded men with definite ideas, but in my opinion, by removing the basic objection and the basic difficulty, and the only one which has never been solved, it will remove any basis for complaint made in 744.

As a matter of fact, 744 is already quite a few years old and it related to a good many matters which even then were not all entirely fresh, and there has been a great deal of improvement in relations all along the line, even before this contract was made. As a matter of fact if there hadn't been, I don't believe the contract could ever have been made.

Q. Isn't it true that Pan American's handling of publicity in this country for Panagra has been poor and has resulted in Panagra's interest being subordinated to those of Pan American?

A. In recent years it has been to our entire satisfaction. Anything we weren't satisfied with we have battled out one way or another.

Q. Hasn't it been your position that Panagra should have a separate and independent publicity department in the

[fol. 4107] United States?

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A. Well, in effect, we have gone somewhat along that direction in having one, and I think the present basis—that is, we have, under Mr. De Groot, a man who takes—and with Mr. De Groot, himself, in fact—takes an active interest in publicity. It is done in cooperation with Pan American's publicity department.

It doesn't always work a hundred per cent, but it has improved and I think will further improve under this contract.

Q. You had Mr. De Groot in 1943 when you were complaining about that, didn't you?

A. Yes, I say there has been a definite improvement in recent years.

Q. Pan American presently has and exercises a veto power as to all rates and fares placed in effect on Panagra, does it not?

A. They do not.

Q. Haven't they until recently done so?

A. They never did.

Q. I point to transcript 139 in Docket 779—that is page 139 through 142.

Examiner Wrenn: Is that this witness' testimony?

Mr. Gambrell: It is the testimony of Mr. De Groot.

By Mr. Gambrell:

Q. Would you look at it and see whether that refreshes your recollection?

A. This is testimony of Mr. De Groot in 779 in which he states that in the preparation of new rates and fares that it is customary to confer with Pan American and that they

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[fol. 4108] collaborate on the calculation of new fares because many of them involve connecting fares. "In a number of cases there are competitive fares via alternate routes which are partly or wholly under the jurisdiction of Pan American Airways."

It says further: "As a matter of fact, in setting new rates for Panagra, are they always cleared with Pan American Airways, Inc." and the answer is "Yes," but that doesn't mean that Pan American has a veto. I never understood that Pan American had a veto over our fares. They were discussed with them, of course for the reasons indicated.

Examiner Wrenn: You can clear it up with him, Mr. Gambrell. He will be a witness.

(Discussion off the record)

Examiner Wrenn: Take a five minute recess.

(Recess taken.)

Examiner Wrenn: Gentlemen, let's be in order. Proceed, Mr. Gambrell.

By Mr. Gambrell:

Q. Mr. Roit, I show you a document here dated December 14, 1944, labeled, "Brief of W. R. Grace and Company, intervenor before the Examiners" in Docket 525 of the CAB.

Do you recognize that as the brief of the company of which you are co-chairman?

A. Yes.

Mr. Gambrell: We wish to have it identified for the possibility of introduction of a quoted portion which we can put in later.

Examiner Wrenn: All right. It may be marked for identification as EAL No. 1.

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Mr. Gesell: What is the date of the brief?

Mr. Gambrell: December 14, 1944.

Shall we introduce—

Examiner Wrenn: Have you distributed them?

Mr. Gambrell: No, sir. We can now.

Examiner Wrenn: All right. Go ahead.

Mr. Gambrell: In lieu of the entire brief an extract commencing at the middle of page 17 and going through to the middle of page 23, and mark that EAL-1 instead of brief itself.

Examiner Wrenn: All right, Mr. Gambrell, it will be so marked for identification.

(Eastern Air Lines Exhibit EAL-1 was marked for identification.)

By Mr. Gambrell:

Q. The brief we spoke of was filed with Grace's authority for Grace, wasn't it?

A. Yes, sir.

Mr. Gesell: Mr. Examiner, we will be glad to cooperate with Mr. Gambrell to speed this kind of process up. If

there is any kind of brief which has been filed by Grace or by Panagra that he wants to have identified just go ahead and have it identified.

We will stipulate that those are briefs that don't have to be identified by the witness unless he wants it.

Mr. Gambrell: I have one other brief of W. R. Grace and Company dated April 21, 1945, in Docket 525.

Examiner Wrenn: What brief is that, the one that is

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[fol. 4110] filed with the Board?

Mr. Gambrell: That is right. On exceptions.

Examiner Wrenn: All right.

Mr. Gambrell: And there is no question about that.

Mr. Gesell: As to its authenticity none at all.

Examiner Wrenn: We will mark that for identification as EAL No. 2.

Mr. Gambrell: We do not wish to introduce the entire brief but we wish to introduce a paragraph in the middle of page 10. It is very short and I can quote it in the record.

Mr. Gesell: Wait minute. It isn't in evidence.

Mr. Gambrell: I beg your pardon. It is included in EAL 1 and I move to strike the other. I had forgotten it.

Examiner Wrenn: All right. And strike my identification as EAL No. 2. It is already included in EAL No. 1 which has been marked for identification.

Examiner Wrenn: All right. Let's be in order. Go ahead.

By Mr. Gambrell:

Q. Mr. Roig, I want to refer to the brief filed for Panagra in Docket 525 dated April 21, 1945. I don't want to introduce the brief as a whole but I want to call your attention to a statement in the brief and ask you if you concur in it.

Top of page 38: "No man can serve two masters."

A. You don't expect me to disagree with that.

Q. "Inevitably the carrier will favor one service to the detriment of the other. This may take the form of economizing and thereby rendering inferior service in one branch of the operation, or it may take the form of earning too

[fol. 4111L] much out of one branch of the operation. The Board would find it difficult if not impossible to so supervise and regulate as to insure the proper development of both services.

"Its problem of securing adequate services and proper rates would be greatly confused by the dual operation. The closest scrutiny of accounts and investigation of operations would be necessary if the Board were to come anywhere near living up to the standards which it has set for itself."

Mr. Gesell: May I see that document?

The Witness: You would like to see it here and see what it relates to.

By Mr. Gambrell:

Q. Is that a fair statement of good regulatory principles as you understand it?

Examiner Wrenn: Let's leave the question pending for a minute while the witness and counsel look at the document.

A. I think it is sound doctrine as related to the subject to which it refers, which is the combination of domestic and international operations by Eastern and Braniff between the United States gateways and Balboa.

By Mr. Gambrell:

Q. Do you mean to say that it wouldn't have application to anybody except the two you have mentioned?

A. That is the connection in which the statement is used. The first statement—as I say that is a general statement—but the rest is related to this situation or one that was strictly analogous to this one, obviously.

Q. Would you say that if Panagra and Pan American

[fol. 4112] join up in a compact such as represented by contracts A and B, that that would have a dual control presenting some of the problems referred to in this quotation.

A. No.

Q. What would be the difference between your two carriers and any other two carriers getting together?

A. That is a very long story. It would depend on how the other carriers were getting together. The only part of it that

Examiner Wyman: I don't know where we are going. I have no objection whatsoever to the witness making any answer he deems necessary to reconcile his answer with your question relating to the views expressed in the quotation you have just read, Mr. Gambrell, but I don't think we ought to get too far afield from that. Go ahead if you can answer the question.

A. (Continuing), I consider that the extent to which these parties have got together under the terms of these contracts, are a perfectly workable specific arrangement.

How that might compare with a different arrangement that might be made between other carriers, I can't generalize to that extent.

By Mr. Gambrell:

Q. Do you take the position that there might not be a favoring of one and a penalizing of another in respect to publicity or in respect to handling of maintenance and allocation of costs in the contracts now under consideration?

A. Oh, no. I think that such a theoretical, and if you like, other possibility exists, but I think the contracts contain provisions which are calculated to meet that situation and which I think will meet it.

Q. But you don't think two other carriers could get together and do that?

A. No, I don't think that at all. I think two other carriers signing an agreement exactly like this would, in principle, be in the same position that Pan American and Panagra are in.

Q. Do you believe that if Eastern were projected to the Canal Zone and entered into such an arrangement as this with Panagra, that that would be good and workable and desirable in the public interest?

A. In principle I certainly could raise no objection to it provided it was identical with this.

How that might be affected by other circumstances I would have to judge on the facts of the particular case, but certainly in principle I would agree with you.

Q. Is Panagra planning to make a strenuous effort to capture cargo business from here on?

A. Very definitely and not only from here on but always. Panagra was the first United States certificated airline to operate a regular scheduled freight service—and I mean first. We began that service on a pioneering basis. We have developed it and continued to develop it and we expect to keep on doing it.

Q. In fact, in the very early days heavy mining transport operations were handled through air service in the Andes, weren't they?

A. They were by Panagra and still are by Panagra. We

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(fol. 4114) have an operation of that kind now. But that is not what I was referring to. I was referring to the scheduled cargo service over our whole international route between Buenos Aires and Balboa.

Q. Is Grace Line Inc., the steamship company, going to push energetically the cargo business also between points on the West Coast and Canal Zone and Caribbean and New York City?

A. Yes.

Q. Steamships?

A. Yes.

Q. You expect to press both of them—I mean the W. R. Grace interests will press both the air service of freight and the boat service of freight?

A. Oh, yes. Of course the competitive area as I said the other day is not identical at the moment. I might add, Mr. Gambrell, when you say is Grace going to press both, that it is a totally separate, totally independent, differently compensated, differently managed, organization, which is doing the pressing.

Q. Grace Line, Inc., the steamship company is a hundred per cent owned by Grace and Company, is it not?

A. That is correct.

Mr. Gesell: That has been answered before.

Examiner Wrenn: All right. The question has been answered. Go ahead.

By Mr. Gambrell:

Q. Let's look at Exhibit 2 of Pan American Panagra, please. Do you know the mileage differential in respect to

[fol. 4115] New York-Buenos Aires, air service, as between Pan American's shortest route through Puerto Rico on the one hand and the connecting service by shortest routes through the Canal Zone on the other?

A. I haven't the exact figure in mind but I think that the connecting service through Miami, proceeding from Balboa over the Panagra great circle route, is slightly shorter.

Mr. Schneider: Excuse me. You mean the great circle from Balboa to BA or the point to point great circle?

The Witness: Well, it would be the same—I can't say—I mean as shown by this map—all the way.

Examiner Wrenn: That is Exhibit 2.

The Witness: We couldn't have a point to point comparison because he is asking about Buenos Aires.

Mr. Schneider: I mean it is the great circle from Balboa to BA non-stop.

The Witness: You are speaking of time rather than mileage.

Mr. Schneider: No.

Examiner Wrenn: He means do you follow down this heavy black line as shown as Exhibit 2 when you compute the mileage?

The Witness: I am figuring the dotted line.

By Mr. Gambrell:

Q. The dotted line represents the authorization received in 525, does it?

A. Yes. That involves some stops.

Examiner Wrenn: Mr. Friendly tells me he has the figures here. If you have them let's just a minute, Mr.

Gambrell. I think Mr. Friendly said he had the figures

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[fol. 4116] here if you want them.

Mr. Gambrell: I am willing for him to tell them to Mr. Roig and let him give them.

Mr. Gesell: We don't have to go through all that.

Mr. Friendly: The mileages given to me for the following route, New York-Washington-Miami-Balboa and thence by the dotted line shown on Exhibit P.A.A. 2 from Buenos Aires is 5735 miles.

The mileage by Pan American's route, New York-San Juan-Trinidad, Belen, Rio, Sao Paulo, Buenos Aires, is 6255; Panagra's route being slightly less than 500 miles shorter.

Examiner Wrenn: Thank you, Mr. Friendly.

By Mr. Gambrell:

Q. Does that represent the shortest possible flight via Pan American through the Puerto Rico gate or does that represent some unnecessary zigzagging from a non-stop standpoint?

In other words, is that the shortest flight that Pan American can make through the Puerto Rican gate?

Mr. Friendly: Substantially. There might be a few miles saved by cutting out Trinidad but very few.

Mr. Gambrell: It does take advantage of the so-called cut-off of the hump.

Mr. Friendly: Oh, yes, definitely.

By Mr. Gambrell:

Q. Would you say, Mr. Roig, that the 500 mile differential in favor of the Canal Zone route would compensate for the fact that there must be a transfer at Canal Zone in

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[fol. 4117] respect to attracting business from New York to Buenos Aires?

A. No, I would not.

Q. Do you think the 500 mile distance advantage is not equal to the disadvantage of transfer at Canal Zone?

A. Well, there are other considerations. I consider the 500 miles a very important competitive advantage which I intend to use to the fullest possible limit, but it isn't the complete answer to the transfer point for a variety of reasons.

Just to mention one, if you have to transfer at Balboa our whole investment in sleeper planes may become a loss because we can't undertake to transfer people at Balboa let's say, in the middle of the night if that is the way the schedule worked out, and compensate them by telling them that they were saving a couple of hours in time which was being wasted in those transfers. They are not comparable things.

Q. What is Panagra's relationship to the thin line system northeast of Lapaz on the map there?

Examiner Wrenn: That is Exhibit 2 you are still talking about?

Mr. Gambrell: Yes.

The Witness: Yes.

A. That thin line service mostly north of Cochabamba, is that what you mean?

By Mr. Gambrell:

Q. That is right:

A. Yes. There are two little lines which are part of the same picture. That is the route of Lloyd Aero Boliviana. It was a German route prior to the war. It was

[fol. 4118] considered a matter of great strategic importance that it should be Americanized. The United States government asked Panagra to assist them, and in cooperation with the United States government and Bolivia, arranged to Americanize or nationalize—when I say Americanize now I mean in the broad sense of North and South America—to nationalize that operation.

We, accordingly, in cooperation with the two governments—and under circumstances which were extremely dramatic, to say nothing more, from the war angle, which I needn't go into here—succeeded in working out a reorganization of that Lloyd Aero Boliviana, under which the

Bolivian Government became the principal stockholder and that was over 51 per cent.

Bolivian Nationals who already were investors in the company, were carried along to the extent, I think of about 25 per cent or 20 per cent, something of that sort, and Panagra entered into a contract with LAB under which Panagra undertook to provide technical and administrative supervision of that operation and to build it up as a Bolivian National line for a period of five years.

In return for those services Panagra received a small cash payment which was very substantially less than our cash outlays in performing the contract, and we also received the right to purchase each year certain shares of

the company ~~as cash~~ and to receive certain shares as partial compensation for our services.

Under that arrangement we have acquired a total of I think about 25 per cent.

Q. Do you have contract rights that may put you in possession of a great percentage as the relationship goes

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[fol. 4119] on?

A. No. Actually the contract was modified about a year or two ago to reduce the number of shares which we might acquire—reduced by discussion with our consent—and the entire contract expired in August, I think, of this year, the five years being up.

We are going along on a modified basis at present, but under a basis which gives us no rights to subscribe to any shares at all nor to receive any shares as compensation.

Q. On Monday I understood you to stress the point that your company, Panagra, serves a country that Braniff is not authorized to serve. Was it Chile?

A. Chile is the principal spot, yes.

Q. And I believe you press the point that there is a substantial community of interest, and then later on, in another connection, you stress the fact that Braniff was substantially blanketing you throughout except Chile.

Now, do you mean to stress Chile as an important point that you serve that is not served by Braniff, or do you mean

to say that Braniff's blanketing of Panagra is so comprehensive that the Chilean difference doesn't amount to anything?

The Witness: Well, without going back to explain what may have been a correct or incorrect inference from anything I have said before, may I just answer the question now?

Examiner Wrenn: Certainly. Go ahead.

A. Braniff parallels our international route, in substance, all the way along, except Chile. Chile is not an unimportant part of our route. It is an important part of

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[fol. 4120] our route. From Braniff's angle of course that is offset by the fact that he goes to Rio which is a many times larger traffic generating section than Chile.

By Mr. Gambrell:

Q. Have you any way of comparing Braniff's United States traffic potential in relation to points south of Balboa and the traffic potential that would normally flow from that portion east of the Mississippi through Miami.

Mr. Gesell: Mr. Examiner, Mr. De Groot is the witness on these questions of traffic estimates and things of that sort, and he is prepared to answer several questions that public counsel has raised right on this point.

Mr. Gambrell: Very well.

Mr. Gesell: If Mr. Gambrell would like to defer, I think we could get along.

Mr. Gambrell: Alright.

By Mr. Gambrell:

Q. Looking at Exhibit 4:

Mr. Gesell: Before we leave Exhibit 2, may I correct a couple of inaccuracies on the exhibit?

Examiner Wrenn: Go ahead.

Mr. Gesell: And to speak of one new development. This exhibit does not show that Panagra has reinstated its service between Quito and Cali but that service is now operated, I think, on a daily basis.

It also fails to show that we are authorized to operate to a point in Ecuador named Riobamba.

It also fails to show the order of the Board which was issued after this exhibit was prepared, eliminating the

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[fol. 4124] Corumbà connection on the border of Bolivia and Brazil with Panair do Brasil and permitting Panagra, under a temporary exemption order, to proceed further into Brazil to a point known as Campo Grande, slightly to the southeast of Corumbà, where connections will be made with Panair do Brasil.

Examiner Wrenn: All right.

By Mr. Gambrell:

Q. In connection with Lloyd Aereo Bolivia, still looking at Exhibit 2, does W. R. Grace and Company have any other subsidiary interests than that and Panagra as far as air transportation is concerned?

A. This is not a W. R. Grace and Company interest except as W. R. Grace and Company is interested in Panagra.

Q. I broadened it in order to include everything.

Are there any other airlines inside the W. R. Grace and Company system besides Panagra and Lloyd Aereo Bolivia?

A. W. R. Grace and Co. as such has no substantial holding of any airline except Panagra and Eastern.

Q. Does it have any in fact?

A. I think W. R. Grace and Company owns a few shares of the Faucett Company in Peru of which Panagra owns 25 per cent and I know that W. R. Grace and Company owns a thousand shares of Pan American Airways.

Q. Without laboring the point, are there any other holdings in airlines of W. R. Grace and Company or of any of Grace's subsidiaries, including Panagra—I mean without asking it all—you know what I mean, I think.

A. No. I think that the only airlines that we have,

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[fol. 4122] as a group—

Q. Directly or indirectly?

A. Directly or indirectly, regardless of percentage that we have

which any ownership in in is primarily Panagra; the

next largest is Eastern and there are these two small holdings of Grace ~~and~~ Pan American and Fauett, and there are the Panagra holdings in Lloyd Aereo Boliviana and Fauett.

Q. W. R. Grace and Company owns about three and a half per cent of the stock in Eastern, is that right?

A. It has been substantially reduced. It isn't a very large percentage. I think about 80,000 shares.

Q. Around 3 $\frac{1}{2}$  per cent?

A. I should think that it was about right, yes.

Q. Does the record show where Fauett operates?

A. I don't know whether it does or not but I can readily tell you if you are interested.

Q. Just generalizing?

A. Fauett is a Peruvian Airline operating entirely within Peru. They operate routes along the coastal cities of Peru, and also to the interior point of Iquitos over towards the Brazilian border, Arequipa, and I think they have a service to Cuzco.

Q. Does the relationship of Grace and Panagra with Fauett and with Lloyd Aereo Boliviana, vouchsafe to the Grace airlines preferential ratings?

Examiner Weintraub: Preferential what did you say?

Mr. Gambrell: Preferential routings.

Mr. Gesell: What is the Grace Airlines?

Mr. Gambrell: I can cite them if you want to—Panagra

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[fol. 4123] tions with National which serves the eastern United States, and New Orleans which is in the middle of the Mississippi, more or less.

Q. Exhibit 25. Do you have listed here all of the agreements between Panagra and or W. R. Grace and Company, on the one hand, and Pan American Airways, Inc. and or Pan American Airways Corp. on the other, in respect to arrangements for air transportation?

A. I shouldn't think that it does include every—well how, wait a minute—that I presume is something that has

to be filed. There are working understandings in connection with joint facilities perhaps. I don't know whether they are all here or not.

Q. Some of these do not appear in your notations to have been approved. Have all of these been approved by the Board?

A. I couldn't answer that, Mr. Gambrell. I would assume that the ones that required approval have been and that the ones that were merely required to be filed have been filed.

Q. Has the 1939 agreement been filed with the Board?

A. It was not filed; it was discussed with them at the time it was made.

Q. Do you have knowledge of that, or who has best knowledge of that?

A. I have some knowledge, because I was personally on one of the occasions present.

Q. Well, does that agreement not come within the terms of 408 and 412 of the Act?

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[fol. 4124] Mr. Gesell: Isn't that a legal question, Mr. Examiner?

Examiner Wrenn: I think it is.

Mr. Gesell: I object to it.

By Mr. Gambrell:

Q. Do you know why you didn't file the document, if it wasn't filed?

A. My only recollection is that it was because the contract was between Pan American Corporation and W. R. Grace and Company, who were not carriers, air carriers. It was not because of any disposition that it shouldn't be fully understood because I have explained it was discussed with the Board.

Q. Don't those two companies control air carriers?

A. W. R. Grace and Company does not control any air carriers.

Q. Does it not have negative control of Panagra?

A. It owns 50 per cent of Panagra. It does not control it, in my opinion.

Q. Has any body adjudicated that W. R. Grace and Company is not an air carrier under the terms of the Act?

A. I don't recall any case in which it has been decided.

Mr. Gesell: I can throw some light on that.

Examiner Wrenn: Go ahead.

Mr. Gesell: There was a decision by Examiner Nye on that question, of the Civil Aeronautics Board.

By Mr. Gambrell:

Q. Was this document, the 1939 contract, submitted and did the Board render an opinion that it was not subject to the requirements for filing?

[fol. 4125] A. No.

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Q. Have you any record to show the Board's consideration of it in any way?

A. Well, my recollection is all I can think of at the moment. Whether I have any written record or not, I don't know, but I ~~have~~ no doubt that I have.

Q. You haven't even a letter or anything in writing indicating that the Board has indicated its lack of interest in that contract for filing purposes?

A. I am sure there is no such letter from the Board.

Mr. Gambrell: That is all.

Examiner Wrenn: Mr. Fitzgerald, you may examine the witness.

Mr. Fitzgerald: I have a couple of questions, Mr. Examiner.

(Off the record)

Cross-examination.

By Mr. Fitzgerald:

Q. Mr. Roig, is it true that Panagra will not receive any of the benefits of the revenues which accrue through the operation of your planes between Balboa and Miami?

A. Not directly as revenue from the operation. We will receive a charter hire which includes our expenses and a return on our capital investment.

Q. Isn't it fair to say, then, that any diversion which might accrue from that particular segment of the service, will not be of any harm to Panagra?

A. You mean any diversion of traffic from the Panagra plan?

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[fol. 4126] least as far as National is concerned, certainly not to favor us but to just treat us as one of many in the field.

Q. In that case, if National did that, you at least would get a share of National's traffic which you won't get at all under the present certification?

A. No. I think that under—well, under our present certification, without this through flight service to Miami—but I am not considering that. That is a desperate situation *from National*

tion. What little crumb we could pick up ~~under that~~ would not be of very much nourishment to us. We would have to have something more than that.

Q. When you were testifying regarding négociations leading up to this agreement, you used the term "We", I believe, to describe yourself and certain other persons who I believe are on the Board of Panagra.

When you have used that term "we", were you thinking of yourself as a director of Panagra or as a representative of W. R. Grace and Company?

A. I couldn't answer the question without seeing the particular case. It may have been one in one case and another in another.

Q. Let me ask you this: Is it true that the negotiations in this case were in essence between W. R. Grace and Company and Pan American rather than between Pan American and Panagra?

A. Well, that is somewhat metaphysical, but actually what happened was the matter was brought up in the first instance in the Panagra meeting as a Panagra matter.

When it was decided that we would endeavor to work out

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[fol. 4127] something, I asked Mr. Gesell, who was Pan-

agra's lawyer and not Mr. Cahill, who had been Grace's lawyer in 779, to work the thing out.

I think the relative relationship is evidenced by the terms of the agreements. Now, no doubt that was a matter in which Grace was interested as well as Panagra, but Grace's interest was because of its interest in Panagra, not because of any outside consideration.

Q. Isn't it true that as long as the Pan American directors had one position and the remainder of the directors had another, that Panagra as such did not have a position on the case?

A. Yes.

Q. Now, Mr. Roig, there are certain elements in this contract which I believe we might call extra concessions which Pan American made to Panagra in connection with the negotiation of this arrangement.

Do you think that is fair to say that?

A. Yes.

Q. As president of Panagra, wouldn't it be fair to say that you would be glad to accept an arrangement whereby you merely chartered your planes and crews to Pan American for the through operation into the United States, without these extra concessions?

A. Oh, no. I would rather have this.

Q. Now, suppose you couldn't have it, wouldn't you take the other?

Mr. Gesell: Mr. Examiner, shouldn't we, to avoid any confusion here, ask Mr. Fitzgerald to state what the extra concessions are, because Mr. Roig might have one thing

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[fol: 4128] in mind and Mr. Fitzgerald another?

Mr. Fitzgerald: I will state them briefly. I mean the agreement whereby Pan American does maintaining work, training work, and sales work for you?

By Mr. Fitzgerald:

Q. Wouldn't you be willing to take the through plane agreement without those things?

A. No. Not in the sense you mentioned, because you referred to a straight charter, just turning over our plane for so much an hour.

Q. I mean with your crews and just exactly as you have it, that is, take everything away from this agreement except that.

A. That would be very, very far from giving us what we have here.

Q. I agree; but wouldn't you take it?

A. You mean if that is all I could get?

Q. That is right. If that was all you could get.

A. I wouldn't take it as against the possibilities which I would consider certainly worth fighting for, in that case, of something better.

I wouldn't consider that a satisfactory disposition of the problem, in other words.

Q. But it would get you to a terminal in the United States which is your No. 1 objective.

A. It would get our plane through with our through traffic, that is true, but there again, not unless it were coupled with some of these other provisions such as the regulation of schedules, and a lot of things of that kind.

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[fol. 4129] Q. Which have to do with that operation?

A. Yes.

Q. Well, let's just say suppose the Board were to say to you "Mr. Roig, you can have this, but you can't have this training agreement; you can't have this maintenance agreement and you can't have this Pan American sales service;" would you take that?

Mr. Gesell: What does he mean, Mr. Examiner? I object. I can't see the relevance to what Mr. Roig would take personally. It seems to me the question is very "iffy" and I can't see the materiality.

Examiner Wrenn: Let's get back to the point. I think what Mr. Fitzgerald has in mind, is that he may intend arguing certain provisions of this contract are contrary to the public interest and should be either disapproved or conditioned, and I take it what he is trying to get from Mr. Roig is the essential nature of those things to this agreement, and how much Panagra feels like they could accept.

Mr. Fitzgerald: I think, Mr. Examiner, that they have a lot of things in this agreement which really have nothing to do with the interchange—I am sorry, I withdraw that—with

this through flight agreement, and I want to explore that just a moment.

By Mr. Fitzgerald:

Q. I am not trying to bring in anything that isn't in the contract. I am just talking about those three or four major concessions which Pan American made in addition to the contract to operate your planes into the United States and the incidental provisions which are necessary for the proper operation of that operation.

A. I think the maintenance comes pretty close to being

[fol. 4130] a part of that, but I wouldn't take any commitment at this time as to what I might do at some future time under a totally different set of facts.

Q. Now, Mr. Boig, do you believe that Pan American agrees with you in your conclusion that the maintenance of Panagra's planes in the United States is a substantial benefit to Panagra?

A. I think they do; yes.

Q. And do you believe they have the same opinion regarding the training of personnel in the United States and the sales and promotion provisions?

A. I think so. Mr. Friendly can answer directly.

Q. Do you believe that Pan American would agree to do those things without the through service agreement?

A. I can't answer that. I have no way of knowing.

Mr. Hamilton: Mr. Examiner, I object to that and suggest that the questions be addressed to the proper witness.

Mr. Fitzgerald: I wanted to ask him if he thought they would.

Mr. Giesell: He has been asked it once in this proceeding and said he didn't know.

Examiner Wienn: I think it is more properly addressed to Mr. Friendly when he testifies.

By Mr. Fitzgerald:

Q. Doesn't Pan American do some of your sales and traffic work in the United States now?

A. Oh, yes.

Q. Could you give me a general idea as to how that is going to be augmented?

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[fol. 4131] A. It is going to be modified as well as augmented in a number of important respects. In the first place, there is going to be an adequate Panagra display in the sales offices of our name and so on. In the second place, there is going to be one man in the principal sales office, particularly charged with looking after Panagra interests in connection with sales, with appropriate proceedings co-ordinating that work with the work of Panagra's independent general sales manager to see that the job is properly done.

*Panagra's*

There is also a provision that ~~Grace~~'s traffic organization may propose methods of sale and handling to be carried out in the Pan American sales offices and means for liquidating any difference of opinion as to the advisability of those suggestions.

There are also clear provisions on the subject of advertising and publicity. I consider that the changes made have the effect of completely revolutionizing the methods of handling Panagra sales through the Pan American sales offices.

Q. Did you ever make any effort to have this sort of a change made prior to this agreement?

A. Some of the things we have, yes.

Q. And you were unsuccessful?

A. Yes. Not on everything, but on these particular matters, I am trying to recall whether any of these particular matters have been specifically suggested on a previous occasion. I am not sure that they were in this specific form. Perhaps Mr. Detreot could be a little more exact on that.

Q. Has Pan American been your agent in the United

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[fol. 4132] States in the past?

A. I have just so testified.

Q. And they will continue to be; that part is not clear, then.

A. Well, that is just a work. They will continue to be *now* in a totally *new* form.

Q. There will be additional things added on?

A. Not only additional, but a total, as I expressed it, revolutionary change in the whole thing.

Q. Has W. R. Grace also been an agent of Panagra in the United States?

A. Not in the United States; although we have sold, in a general sense it might constitute an agency; we sell Panagra tickets; yes.

Mr. Fitzgerald: That is all.

Examiner Wrenn: Department of Justice may examine the witness.

Mr. McDowell: If the Examiner please, we are somewhat embarrassed by the necessary absence of Mr. Hickey this morning who had been preparing to cross examine the witness. I wonder if it would be convenient for the Examiner to break for the luncheon session now, so we can have Mr. Hickey here this afternoon to conduct that examination?

(Off the record)

Mr. Highsaw: Mr. Examiner, there has been a great deal of ground covered and I will make an attempt not to duplicate any of the questions, but I might inadvertently do so, and if you will just call my attention, I will withdraw them.

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[fol. 4133] Cross-examination.

By Mr. Highsaw:

Q. How many of the Grace Company directors are also directors of Panagra, Mr. Roig?

A. Mr. Garni and I, who are directors of Panagra, are also directors of W. R. Grace and Company.

Q. How many directors does W. R. Grace have altogether?

A. I think we have a dozen or more. About 12, 13 or 14; I don't know exactly.

Q. Could you get us the same information as between W. R. Grace and Grace Lines?

A. You mean between Grace Line and Panagra?

Q. W. R. Grace and Grace Lines.

A. W. R. Grace and Company and the Grace Lines—suppose I get that accurately instead of trying to remember it. I will get it on to you during the noon recess and give it to you accurately.

Examiner Wrenn: All right.

By Mr. Highsaw:

Q. Are any of the directors of Panagra also directors of Grace Lines?

A. Yes.

Q. How many of those? Could you give that information?

A. As I recall right now, I am a director of Grace Lines and Mr. Garni is, and Mr. Patchen is.

Q. How many directors does Grace Lines have?

A. That I will look up for you.

Q. Does Panagra make any payments to Grace Lines for management whatever?

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[fol. 4134] A. No payment to Grace Lines for management whatever.

Q. To W. R. Grace and Company?

A. Yes.

Q. Do you know how much that was during the past year?

Mr. Gesell: Aren't the Form 380's in evidence here? They show that information.

Examiner Wrenn: Aren't they contained in your stipulation?

Mr. Highsaw: Yes.

By Mr. Highsaw:

Q. Are any services rendered, Mr. Roig, by Panagra, for either W. R. Grace or the Grace Lines?

A. Only in that W. R. Grace & Company, I guess, is Panagra's best customer. Grace Line is an important customer too; I mean we render service to both of them in carrying personnel and mail and express from time to time.

Q. In other words, W. R. Grace performs services for Panagra and Panagra performs services for Grace?

A. The only service that Panagra performs for Grace is precisely the same as performed for any member of the public.

Mr. Fitzgerald: Revenue traffic?

The Witness: That is all. It is just traffic. As a common carrier we carry a great many Grace Line personnel, but we don't render any service outside of that.

By Mr. Highsaw?

Q. I assume they are paid for just like any other passenger would be?

A. Yes.

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[fol. 4135] Q. These services that W. R. Grace performs for Panagra—you said there were such services—are they under some sort of contract arrangement?

A. It is not under any written contract except as the '39 agreement refers to it; but services rendered Panagra by both W. R. Grace and Company and Panair are the development of a ~~tariff~~ <sup>plan</sup> that has been carried out through the years. It varies from time to time.

Q. That is the management service?

A. That is it. Just to prevent any misunderstanding on that question of tariff, the Grace employees, I might say that up until some years ago there was a reciprocal arrangement between the Panagra and the Grace Line under which employees received reciprocal discounts. That was discontinued several years ago. There is no account of that kind. W. R. Grace and Company had a similar discount.

Q. Did the Board of W. R. Grace and Company discuss the contract between Pan American, Inc. and Panagra, which is Contract "A" in this proceeding?

A. When I submitted the letter to the W. R. Grace and Company Board, I naturally gave them the whole picture.

Q. They did discuss that contract, then?

A. The thing was discussed as a whole.

Q. Was the contract between Pan American, Inc. and Panagra, which is referred to as Contract "A", submitted to the Board of W. R. Grace and Company for approval before Panagra signed it and executed it?

A. No, it was not.

Q. Did W. R. Grace and Company, during the negotiations, express any opinions as to any of the provisions, and urge you to have certain provisions put in, or other provisions suggested by Pan American changed?

A. The discussion with the W. R. Grace and Company Board didn't get down to fine points. It was related more to the overall picture and whether this was going to be a reasonable solution of our difficulties.

I don't recall discussions in our Board's meeting of any particular clause. I wouldn't say there wasn't, but I don't recall it.

Q. Do you remember who suggested the revision of the Grace-Pan American 1939 management contract as a part of this arrangement? That is, which source, whether it was from Pan American's side or the Panagra-Grace side?

Mr. Gesell: There is no testimony here, as there, Mr. Examiner, that there was any suggestion of a revision of the management relationship? I don't understand what Mr. Highsaw has in mind.

Mr. Highsaw: We have a contract here which terminates the 1939 agreement, as I understand it, so I would assume that the 1939 agreement has in some way been revised.

Examiner Wrenn: All right.

A. Well, except as the 1939 agreement is, as I said before, revised from time to time—it has been over the years—there have been no changes as yet made as a result of these contracts.

Examiner Wrenn: Mr. Gesell, there isn't any inference in their overruling you with respect to there not having taken it

been testimony on that. I am taking Mr. Highsaw has been

[fol. 4137] talking about the particular provision in the

agreement relating to it and he wants information as to why that provision was put in there.

I think that is true, isn't it, Mr. Highsaw?

Mr. Highsaw: My question doesn't go to the mere fact of that one word in there. My question goes to the fact that — I will withdraw the word "revision" if that will suit Mr. Gesell. What I want to know is who suggested a substitution of this present contract B for the 1939 management agreement.

A. Well, the suggestion of this type of contract as a settlement of the whole problem came from Pan American, as I pointed out. If you are interested in the particulars, does that answer your question?

By Mr. Highsaw:

Q. That answers it. Do you remember Mr. Roig, from what source the particular provisions in Contract B, relating to the management of Panagra, that is, the election of the president, and those particular provisions, from what source they came?

Were they suggested by Panagra, Grace or Pan American?

A. In the first instance that came forward as a carry-over from the 1939 agreement more or less automatically.

Various changes in the way of restrictions on that power, to which I have testified before, I think came from Pan American's side. Other clauses relating to it, I don't know whether they came from the Pan American side or the Panagra side.

Mr. Friendly, who was a party to the discussions with

[fol. 4138] Mr. Gesell, would know that. I was not a party to those discussions.

Q. Do you have any similar information regarding the arbitration provisions, or would you rather I would ask Mr. Friendly about that?

A. I would rather have you have Mr. Friendly answer that.

Q. Mr. Roig, would you regard Panagra as being in a

strong bargaining position in the renegotiation of these two contracts that we have here?

Mr. Gesell: What is the relevance of that? I object to what Mr. Roig thought was Panagra's bargaining power in this proceeding.

Mr. Highsaw: It has considerable relevancy on what they eventually arrived at.

Mr. Gesell: Mr. Roig has certified that this agreement was an agreement that was considered by him and by the Panagra people and the Grace people and it was determined that it was a sound business proposition.

Doesn't that cover that? He said it was perfectly clear from the testimony. There hasn't been any duress here. Is that what counsel has in mind?

Mr. Highsaw: I am not suggesting duress.

Mr. Gesell: What other meaning can it have?

Mr. Highsaw: Mr. Examiner, I think the witness is capable of expressing an opinion as to his position of his company at the time this agreement was entered into in relation to Pan American. I think that is quite relevant.

Mr. Gesell: But the mere assertion of that statement a

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[fol. 4139] second time doesn't make it relevant. Mr. Examiner, Mr. Highsaw hasn't explained the relevancy to it. I would like to hear it.

Examiner Wrenn: What is the purpose of it? That is what I would like to get at.

Mr. Highsaw: Panagra in this contract as entered into has made various concessions and have received back concessions from Pan American.

Now, the question as to the element of the public interest that was involved in their negotiating and making decisions as to whether they were going to make a particular concession or whether they were not; it seems to me to be directly related to the opinion of the president of Panagra as to what the position of his company was in the negotiations.

If they didn't attempt to bargain at here, that is a fact that the Board should know, and if they were in a weak bargaining position, I think that is a fact that the Board should know in considering this contract.

Mr. Giesell: If there is any suggestion that this wasn't a hard negotiated contract, I think Mr. Roig be allowed to answer the question. I will withdraw my objection.

Examiner Wrenn: All right.

A. I consider that Panagra was in a very strong bargaining position. In the first place, Grace had some months before secured an opinion from the Circuit Court of Appeals, the Second Circuit in New York, which I thought greatly strengthened Panagra's whole stand in connection with this route extension. To be sure it was before the

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[fol. 4140] Supreme Court on appeal, I was not concerned about the outcome any more than anyone is concerned about the outcome of any litigation. I felt confident about it. In addition to that, I felt that with the changed situation in the Caribbean which had arisen with the new routes that had been granted there by 525, that Pan-American might well be more disposed to make a reasonable proposal, as the events showed that they were, and I felt also that the language of the Board in 525 instructing the stockholders of Panagra to get together and provide some system of providing through service gave us a very strong trading position which we didn't fail to use.

Examiner Wrenn: Is this a convenient point to break, Mr. Highsaw?

Mr. Highsaw: Yes, sir.

Examiner Wrenn: We will recess until 2 o'clock.

(Whereupon, at 12:37 p.m., hearing in above-entitled matter recessed, to reconvene at 2 o'clock p.m., same day.)

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[fol. 4141] 2 p.m. AFTERNOON SESSION

Examiner Wrenn: Let's come to order please.

Due to press of other matters, later in the afternoon Mr. Hickey of the Department of Justice has requested your consent to cross examine at this time and Mr. Highsaw has agreed to that so Mr. Hickey you may proceed with cross examination of the witness.

HAROLD J. ROIG, resumed the stand, was examined and testified as follows:

Cross examination.

By Mr. Hickey:

Q. Mr. Roig, Panagra was organized in February 1929, was it not?

A. Yes.

Q. And from the time of its organization up to and including the present time it has been jointly owned and controlled by Pan American Airways Corporation and W. R. Grace and Company?

A. Yes.

Q. That is by virtue of the fact that each of those companies possess 50 per cent of the voting stock?

A. Yes.

Q. I believe you testified Monday to the effect that the Board of Directors of Panagra is composed of four directors who represent Pan American and four who represent W. R. Grace and Company?

A. Well, it is composed of four directors from each side. I have always considered they represented the stockholders of Panagra once they became a director of Panagra.

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[fol. 4142] Q. But they are nominated by each of those companies?

A. Yes.

Q. And does that Board of Directors of Panagra determine and control all policy and action by Panagra?

A. Yes.

Q. Including the—

A. Except such matters as properly go to stockholders.

Q. Including the determination of what rates and fares for air transportation shall be charged by Panagra?

A. Yes.

Q. And including the determination of what routes will be sought and what schedules will be maintained in their operation?

A. Yes.

Q. So that as a practical matter it is true, is it not, that no air transportation rates or routes unacceptable to either Pan American Airways Corporation or W. R. Grace and Company, have or could be affected by Panagra?

A. Well, there have been, certainly in the matter of routes, there have been routes proposed which in the first instance have been considered unsatisfactory by Pan American, let's say, and after discussions have been agreed to.

Q. I realize that but I mean that it is impossible, is it not, that if Pan American finds a route or a rate unacceptable, it would be possible for Panagra to initiate it, isn't that so?

A. Mathematically that is so. Historically, based on 18 years of experience, with the exception of this extension to United States, it is not a realistic view of the situation.

(fol. 4143) Q. That is just as true today, under the agreement here in issue, as it was prior to the adoption of these contracts, exhibits A and B to your petition?

A. Yes.

Q. And it is a well known fact, is it not, that prior to the consummation of the present contracts all efforts by Panagra to secure a terminal within the United States were unsuccessful because unacceptable to Pan American Airways Corporation?

A. Yes.

Q. And that is also necessarily true, is it not, with respect to any route which Panagra might desire, or rates which it might want to charge, for air transportation?

A. I have answered that question, I think.

Mr. Gesell: Mr. Examiner, may I inquire who Mr. Hickey has in mind when he says "Panagra?"

Mr. Hickey: I have the company in mind of which Mr. Roig is the President.

Examiner Wronn: All right.

Mr. Hamilton: Mr. Examiner, I think I may be in error about this, that the phraseology of Mr. Hickey's second question imports into it the first question.

I would like if I may, to have the reporter read it back. I don't think he intended that.

Examiner Wronn: Read the question back please.

(Question read.)

Mr. Hickey: I will withdraw the question and rephrase it. I can see your point.

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[fol. 4144] By Mr. Hickey:

Q. That would necessarily follow, would it not, with respect to any route which Panagra might desire and Pan American would be opposed to?

A. Well, as I have explained: theoretically, yes; historically, *and* *no*; realistically, *yes*.

Q. Has Panagra ever to your knowledge considered the desirability of operating a route along the East Coast of South America?

A. No.

Q. You never have?

A. No.

Q. Well, is there any reason why they wouldn't, in view of the natural development of the traffic potential which would inure to you as a result of such routes?

A. Well, except that when Panagra was originally formed the Grace interest was essentially on the West Coast of South America. That is where most of our business has always been, and our business in an airline at this time was one serving the West Coast of South America and Buenos Aires.

At the time the company was formed, Pan American had already started or laid out a route down the East Coast, and Panagra was set up with a view to operating on the West Coast, and we have always gone along on that basis.

Q. Do you mean by that that you respected each other's territories, spheres of operation?

A. In effect that has been true. There have been a number of quite important departures from it, however.

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[fol. 4145] For instance, some years ago, when we decided that we wanted to run down from Lima through Bolivia and down through the center of the Argentine to Buenos Aires, on what we ~~consider~~ *call* our "diagonal route," that was brought up for discussion, although it was well over on the

eastern side, and after discussion—some considerable discussion—it was agreed that Panagra could apply for that route.

We did apply for it and have been operating it ever since. Later on, of course, we went to Corumba just inside the Brazilian border, along Bolivia, and now within these recent days have extended that to Campo Grande which is some 300 miles further inside the Brazilian border.

We also originally operated in the northern sector along the coast, Pacific Coast of Colombia, and at a later date by agreement diverted the route to an overland route serving Cali in Colombia.

Q. Isn't it a fact that your election to the presidency of Panagra was pursuant to an agreement between Pan American and Grace that the management of Panagra would be in the hands of a Grace and Company representative?

A. Well, that was. I was elected President under the 1939 agreement. The agreement speaks for itself and it says that "one of the Grace directors of Panagra who shall also be a director of Grace will be elected President of Panagra and placed in responsible charge of the management of the company. If at any time the company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign."

That was the statement of the agreement which was [fol. 4146] reached between the parties at that time. - 416 -

Q. Wasn't it implicit also in that agreement that Panagra would confine its operations to the West Coast of South America, the few exceptions you have mentioned and would not operate north from the Canal Zone into the United States?

A. That has been a subject about which there has been great difference of opinion. When you go over the record in 779 which has been incorporated into the proceeding this morning you can see both sides of that question.

I have always maintained the negative of that issue.

Q. Except that you have also maintained that it would surprise you very much. I believe you used that expression in answer to one of Mr. Friendly's questions, that it would surprise you very much if Panagra would operate

down the East Coast of South America and it would equally surprise you if Pan American were to operate down the West Coast of South America?

A. Yes, it would, in view of the way the companies were originally set up and the way they have always gone along.

Q. In other words, if there isn't anything express in this contract, there is at least an understanding between the two companies.

Mr. Gesell: What contract?

Mr. Hickey: Excuse me, agreement.

Mr. Gesell: You are talking about the '39 agreement?

Mr. Hickey: Yes.

Mr. Gesell: I just wanted to be sure.

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[fol. 4147] By Mr. Hickey:

Q. There isn't anything express in that agreement, there at least exists an understanding between the two companies that they will operate in that manner?

A. It never occurred to me that this agreement had anything to do with that subject.

As I say, the companies were originally set up that way, and while there has never been anything approaching a formal agreement on the subject, that general method of operation has been accepted on both sides.

Q. Now, referring back to your testimony on Monday:

A. When I say accepted on both sides, I mean without any limitation on the right of anybody to bring it up, as we have in numerous instances, to extend.

Q. Referring back to your testimony on Monday: Aside from the benefits which you say that at that time would injure to Panagra as a result of this agreement—that is, if I summarize them correctly, maintenance and training provisions, and the sales promotion by Pan American, and the right to operate on Pan American's domestic routes within the United States if subsequently granted by the Board—aside from those alleged benefits, Panagra is just as subject to control by Pan American Corporation and W. R. Grace and Company today as it always has been, isn't that correct?

A. Well, I think that there are certain other provisions in the agreement which facilitate the operation of the administration, so to speak, of the business.

On the question of corporate control there has been no change.

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fol. 418. Q. I believe you also testified on Monday under cross-examination that it was Mr. Gambell that the issue of Pan American's monopoly was resolved in your opinion. I believe you used that expression.

A. Yes.

Q. And in support of that statement you cited the fact that Braniff plus approximately nine foreign companies were offering Pan American competition in South America.

A. Yes.

Q. Is that correct?

A. Yes, I think so, substantially.

Q. Now, in support of that contention and you spoke of preparing to state what percentage of total air traffic each of those approximately nine foreign companies and Braniff, control between Latin America and the United States.

A. I think there is a little confusion in the question there because the nine companies that I referred to, foreign companies, were companies operating in's territory.

Some of them are also in Pan American's territory, others are not and to me, additional companies in Pan American's territory that are not in ours, I mean Pan American or Panagra that you are interested in.

Q. Neither, strictly speaking, I meant only such companies as operate between Latin America, excluding Mexico, and the United States.

A. Of the companies that operate between Latin America and the United States I could give you the percentages either of the existing basis of what they may be on the other

the lines which are not yet operating and I am operating

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fol. 419. Q. Can you name any companies which are now operating?

A. Yes, you have between the United States and South America companies which are carrying important traffic

KLM, TACA which operates from both Balboa and I think from Brazil—I think that line is still running from Brazil—and there are other lines: Avianca, I don't know whether they have actually begun their service but they have been authorized.

Q. I mean now. Excuse me. Let's try to put this question:

Now, operating between a United States Terminus and Latin America?

A. Well, I am not sure whether Avianca is actually operating at this moment or not. I know that TACA and KLM are.

Q. You state you don't know what percentage of traffic anyone of those or all of them in the aggregate 'control'.

A. No, I do not.

Q. Do you know what percentage of total air traffic between Latin America and the United States is at present controlled by Pan American?

A. No. If I did I would know the others. It would be the difference. I have no doubt that Pan American is larger now, but I don't think this question can be decided entirely on the basis of what is existing now.

After all, Braniff isn't running yet. British Airlines isn't running yet.

Q. That is an argument that can be made.

Mr. Hamilton: It isn't an argument.

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[fol. 4150] Mr. Hickey: I was merely trying to get the figures as to this incidental.

The Witness: I think some of our later witnesses can give you those figures but I don't know them.

By Mr. Hickey:

Q. Mr. Gambrell also asked you a question regarding the coincidence of Grace Lines ports and Panagra's air terminals along the West Coast of South America, and I believe you testified that many of the points served by Grace Lines were also served by Panagra, is that so?

A. Well, it depends how literal you are in that. Actually the number of common ports is relatively few. In the first

place, the Grace Line naturally serves only the ports whereas Panagra goes to the interior cities, but from the standpoint of the coastal area it is fair to say that they are serving to that extent a common territory.

When you get back of the coastal area I mean really back - why then you are in an area which Grace Line of course doesn't serve at all.

Q. Is it also fair to say that the principal ports along the West Coast of South America are served both by Panagra and Grace Lines?

A. No, definitely, not because the principal ports on the West Coast of South America are first Colombia, the Port of Buenaventura, Grace Line goes there, Panagra does not.

The next important port is Guayaquil. We both go there.

The next important port is, you might say, Talara, we both go there.

[fol. 4151] The next would be Callao, the port of Peru. Grace Line goes there, Panagra does not. Panagra goes to Lima, the capital, back of Callao, served by Callao, however.

Then there are a number of other Peruvian ports, to none of which Panagra calls. Panagra calls in Peru are Talara, Lima and Arequipa. Arequipa is an inland point in the mountains and the Grace Line does not go there.

When you get to Chile, both Panagra and Grace Line call at Antofagasta, Grace Line calls at Valparaiso and Panagra calls at Santiago.

Q. I believe you also testified on Monday that approval of this agreement would make competition between Pan American and Panagra impossible. I think that is the word you used, from Balboa north into the United States. Isn't that so?

A. I don't know the words that I used, but it is true that between Balboa and Miami, where Panagra has never had any service and Pan American has, there will not be competition between these two companies.

Q. By competition, what form of competition do you

mean? All forms, including service as well as rates and fares?

A. Well, we will simply not be running any planes in that area. We will be providing the public with through service through that area, but Panagra will not be operating planes in that area under this agreement any more than it has before. But that is no reduction in competition, and it is no prohibition about what the future may contain if there is a different set up, but under this contract, com-

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[fol. 4152] petition between the two companies in that area is not contemplated any more than has existed in the past.

Q. As you say, it is obvious that the service as well as the rates and fares will be as determined heretofore by Pan American.

A. Panagra will have nothing to do with determination of rates in that area. We will have the selection of the airplane which we send through. It will be our plane.

Q. I think you further stated that if the pooling arrangement contemplated by Provision 13(a) of the agreement, were subsequently effectuated between the parties and approved by the Board, that there would also be no competition south from Balboa.

Mr. Gesell: I didn't so understand his testimony, Mr. Examiner.

Mr. Hickey: I haven't quite finished.

Mr. Gesell: I am sorry.

Examiner Wrenn: Go ahead.

Mr. Hickey: Maybe I can make this clear.

By Mr. Hickey:

Q. —that there will be no competition from the points served under the pooling arrangement any more than there would be north of Balboa?

A. That is not my understanding. If I said anything that led to that conclusion it wouldn't be a correct conclusion because as I thought I pointed out on a number of occasions, when talking about the pool, pools do not limit competition necessarily to the extent often supposed, for the reason that pools are generally set up on the basis of the

[fol. 4153] position which the members have in a particular trade at the time the pool is set up, but thereafter, unless each member maintains his position, at least up to what it was when the pool was formed, the other members cut him down. They don't carry him along.

Q. But it is true, I think you were talking to Mr. Schneider about this matter on Monday, it is true that you stated that as a result of this agreement, less rather than more competition would result in the final analysis.

A. Well, less competition could only be as between the members of the pool, and whether the result is more or less depends on all these other considerations.

Q. Let me refer to something else in your testimony.

Mr. Hickey: I want to say to Mr. Gesell that I am not trying to paraphrase this inaccurately at all because I wrote it down as it occurred.

I believe the expressions are about what Mr. Bolg said.

Mr. Hamilton: Could you give me the reference to the record as you went along.

Mr. Hickey: No, I can't. I don't have the record with me.

Mr. Gesell: Would it be possible, Mr. Examiner, and Mr. Hickey, just to avoid this problem of trying to paraphrase a record which you don't have, wouldn't it be better to ask the direct question?

Examiner Wrong: I think so.

Mr. Gesell: Concerning what the situation is, and get the answer of the witness.

[fol. 4154] Mr. Hickey: I will ask the question, and if you feel that it is objectionable.

Mr. Gesell: I feel it might be a little simpler for us all.

By Mr. Hickey:

Q. I believe you stated that your decision to enter into arrangements of this character were motivated: (1) by a desire to cooperate with Pan American to keep other competitors, and I am trying to quote you here, 'off your neck.' I think that is about what you said; and secondly,

because it was perfectly proper in your opinion to eliminate ruinous competition between yourselves—meaning Panagra and Pan American—to withstand the threat of competition from foreign air carriers, is that substantially your testimony?

A. Well, whatever I said or in whatever form it may have been said, certainly those were not the primary considerations.

The primary considerations were to solve the problem which had been pending for a number of years, and which had arisen before this competitive situation developed, and the primary problem was to enable Panagra to compete at all—I mean long before we began to worry about any restriction of competition by a pool, it has to be considered that without this agreement, or some other means of getting through to the United States, Pan American-Grace-Panagra—was rapidly getting into a position where it couldn't compete with Pan American at all, much less compete with anybody else, because with Pan American

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[fol. 4155] always having had a through route to United States, and with the Puerto Rico case having a direct route through to the United States, Panagra was in no position to compete with Pan American at all, and this agreement, far from reducing the competition with Pan American, makes it possible for Panagra to compete with them in a way that they couldn't possibly do without some such arrangement.

Q. In what way will you compete with Pan American?

A. For Buenos Aires traffic and for traffic—tourist traffic, based on relative advantages of the two coasts—but primarily in connection with Buenos Aires traffic.

Q. Pan American is going to run the planes from Balboa up into the United States, aren't they?

A. Oh, yes, but the traffic I am concerned about is the traffic that moves over our route from Balboa to Buenos Aires; but which will not take our route if they haven't got the benefit of through service to the United States.

Anyone going from Washington to Buenos Aires, and having a decision to make whether he will go by Eastern to Miami, Pan American to Balboa, and Panagra to Buenos

Aires, as against getting on a plane of Pan American in New York and going straight through, why, the chance of his taking our route is almost zero.

Q. In other words, you are saying that this agreement enables you to compete better with Pan American within South America?

A. Over our route.

Q. But it doesn't in any way enhance your ability to [fol. 4156] compete with Pan American between the United States and South America?

A. Well, it does, Mr. Hickey. Not between Miami and Balboa.

Q. That is what I mean.

A. But between every other point on our route ~~and~~ South America, and including particularly Buenos Aires, which is the competitive point, it definitely improves our ability to compete with Pan American, and that has been the basis of the discussion over all these years, and that was the primary object that we have been seeking and which we have accomplished through these agreements.

Q. You wouldn't deny, would you, Mr. Roig, that one of the—if not the only one, one of the principal motivations in reaching this agreement was the threat of competition proposed by these foreign companies to which you refer, and by Braniff's newly approved route, you wouldn't deny that, would you?

A. No, I wouldn't deny that.

Q. So that you wouldn't say now that you were entirely wrong when you said that it was proper to agree among yourselves in order to eliminate ruinous competition forced on you by others, would you?

Mr. Gesell: I must object, Mr. Examiner. We have gotten confused here between what Mr. Roig said about the Buenos Aires pool, which is not before us here, and this agreement which is before us, and Mr. Hickey has. I am sure not intentionally confused these two things and I included this agreement here for approval in a discussion of the Buenos Aires pool.

[fol. 4157] Those are two separate and wholly distinct problems from a competition view and I think we must try to keep the testimony clear on it.

Examiner Wrenn: I think the testimony should be kept clear on that. I presume the testimony you have reference to is set forth on pages 97, 98 and 99 of the transcript.

Mr. Gesell: That is where the phrase "ruinous competition" was used, for example, in connection with the Buenos Aires pool, not in connection with this agreement.

Mr. Highsaw: Isn't there a provision in this agreement contemplating a Buenos Aires pool?

Mr. Gesell: Of course there is. Mr. Highsaw misses my point entirely. What Mr. Roig says as to the reasons and motivations behind the possibility of the Buenos Aires carriers pooling is not something he said as to this agreement which is before us here for approval. That is my point.

Mr. Hickey: I think he made the statement generally.

Mr. Gesell: Can you show us in the transcript where he did?

Mr. Hickey: I can. I haven't got it here.

Mr. Gesell: I can give you a copy.

Mr. Highsaw: Mr. Examiner, that distinction escapes me. As a part of this agreement, anything he said about that, I don't see how it can be about something else. It has to be about this agreement.

Examiner Wrenn: I am perfectly willing to have the witness state what he had in mind. I have no objection to Mr. Hickey asking him what he had in mind but let's be clear.

Mr. Hickey: I certainly intended no other result than

[fol. 4158] the one you state. I just asked the witness. My recollection was that at the time he made the statement he made it generally and he didn't limit it.

A. I would like to state, Mr. Examiner, if I may, since the question has been raised, just what our position is vis a vis competitors other than Pan American.

I have just explained what it was in connection with Pan American, and how this contract improved our competitive position in that situation.

Now, so far as other competitors are concerned we are not seeking under this agreement any unfair advantages against anybody. There has been a great deal of talk in this hearing about protecting Eastern, protecting National, protecting Braniff.

What we are trying to protect is the traveling public. We are trying to enable the public to travel over Panagra's route, to come through to the United States on our route just the same as they do on any other route.

We are not asking for a new route. We are not asking for anything except to give the traveler on our line a better ride, and at the same kind of a ride he can get on other lines.

By Mr. Hickey:

Q. You are speaking particularly for Panagra now?

A. I am speaking entirely for Panagra.

Q. That is the point I want to make clear.

Examiner Wrenn: Go ahead, Mr. Roig.

A. Now, in the matter of our dealings with competitors, we have offered Braniff our ground facilities and they are using them. They are using them on their survey flights

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{fol. 4159} which are just about now completed.

We have offered the same services to Avianca and TACA and they are using them.

We intend to offer them to others and have offered them to others, but we do feel that we are entitled to give the public that travels over our route the same kind of a service that he gets in other places, and while we are not going to compete unfairly in any of these matters, or tie up with anybody to the prejudice of anybody else, we are going to compete with everybody—Pan American, Grafe Line, Braniff, all the others—we are going to compete with them in ability to serve the public by giving the public the best kind of service that we know how in equipment and in schedules and above all, because experience has demonstrated its great importance, in a through flight from point of origin or destination on our route through to the United States.

Q. I just want to say, Mr. Roig, I fully appreciate the reasonableness of your statement made as a representative of Panagra and of course it wouldn't be fair to ask you what were the motivations behind Pan American's acceptance of this agreement—I am not going into that.

A. No. They would have to answer that.

Q. What was the purpose, if you know, Mr. Roig, of inserting the pooling arrangement contemplated by Provision 13(a) of Exhibit A as it now stands?

It is merely an agreement to agree sometime in the future, is it not?

Mr. Gesell: He was asked that precise question on direct [fol. 4160] and gave a full answer. —430—

Mr. Hickey: May I ask him again if the Examiner please?

The Witness: Can we refer to the record if we have got the record here? Because I have answered it three or four times.

Examiner Wrenn: Certainly you can.

Mr. Gesell: He has answered it in great detail and we might as well have it.

Mr. Hickey: I don't believe that specific question was ever answered.

Mr. Gesell: I will find it for you.

Examiner Wrenn: What point do you have to bring out?

Mr. Hickey: I want to know why it was necessary to include—I want to ask him this question—to include this agreement to agree sometime in the future where Board approval was still a requisite in this particular agreement.

The Witness: That is a different question.

Mr. Hickey: I think it is.

The Witness: I am afraid you would have to ask Mr. Friendly or Mr. Gesell for the answer to that.

Mr. Gesell: There is an answer in the record, I am sure. I will try to find it.

Examiner Wrenn: Go ahead with your examination, Mr. Hickey.

By Mr. Hickey:

Q. Mr. Roig, do Exhibits A or B to this petition contemplate that during the term of this contract, Exhibit A, which

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is a 30 year term. Panagra will not seek an independent franchise to the United States?

fol. 4161 A. There is no provision to that effect in the agreement unless it be the legal provision that the contract will be liberally interpreted to accommodate itself to future conditions.

But it certainly is not within the reasonable intentions of this agreement that so long as we are able to bring our traffic through under this agreement we would seek to come through on behalf of our own.

Q. May I refer your attention to provision 3 of Exhibit B to just one moment? A. I read that provision, the obligations under which Pan American will consent to Panagra's application for an independent franchise are then set forth, are they not?

A. Well, there is one condition, and set of facts under which Pan American will consent, and that being their inability to carry out their part of the contract, let me say of cancellation of their certificates.

Q. Also I think by reason of their failing to fulfill their obligations under the agreement to you, isn't that also included?

A. No, I don't think so. I think this paragraph is related to Pan American's failure to a question where it is impossible for them to perform, owing to some infirmity having developed in their certificates.

Mr. Gossell: That testimony on the pool I was talking about appears at page 75 of the transcript.

The Witness: But the question was different.

By Mr. Hickey:

Q. Referring back to my question, Mr. Ross, isn't it implicit then in this provision that except for default of certificate, Pan American is under no obligation to consent to Panagra's making application for an independent franchise?

A. That is correct.

Q. As a part of this contract, did Grace agree that Panagra should not apply for an independent franchise?

A. Well, Grace has agreed to execute this exhibit B and have executed it. They have not entered into any agreement on that subject other than what is in print here. (indicating).

Mr. Hickey: That is all I have, Mr. Examiner.

Thank you very much for allowing me to go ahead.

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[fol. 4163] Examiner Wrenn: Thank you, Mr. Highsaw, for interrupting your cross examination.

You may continue now.

Further cross examination.

By Mr. Highsaw:

Q. Mr. Roig, right before lunch I believe you said you would be able to get the information for me on the relations between W. R. Grace and Grace Lines as to directors.

A. Yes, and I now have that information.

Q. Will you put that in the record, please?

A. Yes. There are 14 directors of W. R. Grace and Co., two of whom are on the Panagra Board, those two being Mr. Garni and myself.

There are nine directors of Grace Line, three of whom are on the Panagra Board: Mr. Garni, Mr. Patchen, and myself.

Q. That covered the relations between W. R. Grace and Grace Line?

A. I didn't cover the last one. Did you want that too?

Q. Yes, I want that too.

A. On Grace Line, out of 9 directors, six are directors of W. R. Grace and Company: Messrs. Holloway, Garni, Roig, J. P. Grace, Jr., and J. T. Kirby.

Q. Before lunch I mentioned something about management fees. I believe you testified that there was a management fee paid to Grace by Panagra. Is that determined by some sort of agreement between Panagra and Grace?

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[fol. 4164] A. Well, it is determined by the decision of the

CAB in our last rate case which fixed the basis of working the fee out.

Q. There is also a fee paid to Pan American?

A. Yes.

Q. And is there any kind of agreement between Panagra and Pan American and Grace and Pan American for the division of that fee—division of the fees between Grace and Pan American?

A. You mean—I don't understand quite what you mean.

Q. Well, as to how much of the fee goes to Pan American, or is that determined too by the

A. Well, actually this practice developed prior to the time when it came before the CAB in a rate case, and during that previous period the matter had been worked out by discussion and negotiation and agreement each year.

During those periods the amount was not the same every year—it isn't now—and the amounts received by each party were not the same each year.

I think generally speaking Pan American received a somewhat larger fee than did W. R. Grace and Company. Since the CAB thing was before the CAB I think at that time we were receiving the same or substantially the same. I think that is about the way it is now. There might be some slight difference.

Q. There was never any set formula or agreement, it was always a year-to-year negotiation?

A. Yes. Until the CAB basis was determined.

fol. 4165] Q. Since then has it always been made on that basis or have there been subsequent changes?

A. It has been made on that basis with adjustment only to cover the mileage.

I think the CAB indicated a certain amount per revenue mile, something of that kind, and so at least the amount that they allowed that was figured out so much a revenue mile. As the revenue miles have increased, the amount per revenue mile was reduced.

Q. Is there anything in either one of these agreements, A or B, which would affect such a situation at all?

A. No. I think I have explained, however, that it is contemplated that the fee situation will be revised and adjusted

to the new situation created by this new agreement if approved, but that isn't in the four corners of the instrument.

Q. You contemplate that that will be done by agreement of some sort?

A. Yes.

Q. Have any of those agreements ever been filed with the Board?

A. They are not really anything to file. They are just a determination of the matter, as I say, before the rate case on one basis, and afterward on another.

The same thing has been gone into before the Board in rate cases.

Q. You expect the Board to take a look at it in the rate case, then, don't you?

A. Oh, yes.

(16, 4166) Q. I believe you just mentioned to Mr. Hickey that there was no commitment by Pan American as to Panagra applying for a route to the United States other than what is contained in this Paragraph 5, is it?

A. Yes.

Q. --of the Contract B?

A. Yes.

Q. During the negotiations for these two contracts, did you, Mr. Roig, attempt to bargain with Pan American at all on the question of whether or not, in the event this agreement should be disapproved by the Board, that Panagra would have a right to apply for a route into the United States?

Mr. Gesell: I object to that question, Mr. Examiner. I don't think it is appropriate in this proceeding to review the various offers and negotiations back and forth between the parties in reaching this compromise of their difficulties.

That is what this question involves.

Mr. Highsaw: Mr. Examiner, this agreement purports to be more than just an agreement to operate a through service. If that is all there is to it, we wouldn't have so many of these difficulties, but it purports also to settle some of the situations which have existed down there and as long as it purports to be that, it seems to me proper to go into

some of these matters such as I am raising now to judge what the parties did functionally and what was a just settlement which they have reached in the case, after

Mr. Giesell: I quote again on the 29th of May, 1946. W

fol. 4167 can look at the statement and see what was done in the public interest for the purpose of concluding a truce between the parties in dispute and that did not mean the various offers made by one side to the other, as the other certainly doesn't seem to be able to do.

Examiner: Wrong. How extensively are you going to go into this subject?

Mr. Highsaw: I think this is a subject that you may have on it right now.

Examiner: Wrong. I am going to go into it. I am going at least for the time I have left, to try to get to the bottom of it.

A. I think Mr. Ferguson, who is the attorney for the party, those discussions, especially the question of compensation, than I can.

By Mr. Highsaw

Q. The question I asked Mr. Ferguson of Ferguson, you as president of Rautury, made any attempt to negotiate with Pan American to get a right of way across the Pan American, to get a right of way across the Pan American in event this agreement, before or now, was being negotiated with the Board?

A. I discussed the question with Mr. Ferguson.

Q. And you do not know about it?

A. No. I think he discussed it with Mr. Ferguson. That is the reason I suggested Mr. Ferguson could be a better witness than I. He knows all the details.

Q. The only attempt of your party to bar the right, was to discuss it with your attorney.

fol. 4168 A. That is right. I never discussed it with anybody on the Pan American side.

Q. Did you tell your attorney that you wanted him to try to obtain that?

A. I don't recall just what I told him, but in effect, that was one of the things, at one stage of the discussions.

Q. Do you ever recall his reporting back to you on that point?

A. The point was not isolated; it was along with others, and my general recollection is, as refreshed by its absence that

from the contract, that he reported back, ~~and~~ it had not been agreed to.

Q. There has been a considerable amount of discussion here as to the purposes of this agreement. I am not quite sure the record shows in one place just what all of the purposes are. There has been a considerable amount of questioning on individual purposes.

Mr. Highsaw: I don't want to duplicate a question, Mr. Examiner, but I would like for Mr. Roig to state now for the record what he conceives to be the chief purposes of the agreement. As I understand it, they have been to provide this new through service, and secondly, to settle outstanding differences between Pan American and Panagra and I am not clear whether there are any others.

If I have misstated those, I am willing to stand corrected.

The Witness: Those are the purposes. I think there are various purposes incidental to the first one, which you haven't referred to, but which is clear enough in the agree-

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[fol. 4169] ment itself.

By Mr. Highsaw:

Q. Do you wish to say any more on that point?

A. I don't think so.

Q. Which one of these purposes do you consider the most important to the Board's consideration of the agreement?

A. I think the purposes are quite closely interwoven, and of them to which I referred, without going into them, inseparably interwoven, but the outstanding purpose of this agreement is to enable Panagra to offer the public a through flight service to points on its route to the United States.

Q. This next question also deals with a point that I am not quite clear on. There have been several individual

questions asked about whether this settled specific disputes in specific dockets that are before the Board.

• I am not clear whether you have given an answer on the question or whether or not this agreement makes an attempt to settle the basic question of the divided responsibility in the ownership, excepting so far as that may be reflected in the specific disputes that this agreement covers.

Mr. Gesell: I am not sure I understand that question. Could I have it read?

Examiner Wrenn: Read it back, please.

The Witness: Perhaps you could state it another way.

(Question read)

Mr. Gesell: I don't understand it.

Mr. Highsaw: I will rephrase the question.

Examiner Wrenn: All right, Mr. Highsaw.

By Mr. Highsaw:

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[fol. 4170] Q. What I have in mind is: In the decision in 779 the Board at page 678 stated: "Deadlock between the two interests equally represented in the ownership of the company is always possible and certain to occur from time to time, especially in view of the special interests and the other activities of the two co-owners." The question to which I addressed myself is whether or not this agreement attempts to settle that specific problem which was referred to in that quoted language.

A. The agreements attempt to settle the one question of that character which over the years has proved insoluble. It goes further, however, and it not only provides for methods of settling the details of that question but I think under the general arbitration clause, it does provide a fairly broad basis of determination of even some broader questions.

Q. That last phrase of yours, is what I am not quite clear on. Would you mind clarifying that a little bit? Do you mean broader questions - these specific points that are covered in the agreement such as advertising?

A. Well, you see, there is a method of avoiding deadlocks on all the questions incidental to the execution of the contract. So there can't be deadlocks under that heading. The contract itself takes care of the only question between the parties through the years that it hasn't been possible to settle between themselves.

Q. But the agreement does not, I take it then, attempt to settle any deadlock which might arise. There is no procedure in the agreement for that?

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[fol. 4171] A. No, "any", however I want to be sure of the sense in which that is used. In the sense that it means some, the answer is no. In the sense that it means "all" the answer is yes.

Q. Was any consideration given in the negotiation as to this agreement as to the settlement of that broad basic question of the possibility of deadlocks arising out of the fact that there were two equal co-owners?

A. I don't recall any discussion of any contract provision to that end. I don't think so.

Q. Mr. Roig, do you consider that as president of Panagra, you are better protected in the management of Panagra's affairs under Agreement A here as implemented by Agreement B than you were under the old 1939 management agreement which has been introduced here in evidence?

A. On balance, I should say it was the same. There are some particular provisions that ~~sprint~~ in both directions.

Basically the administrative function of the president under this agreement is the same as it was before. Actually that has been limited, in one respect, by the Pan-American approval of the operations manager, and by the provisions for the removal of the president, which I testified about yesterday.

On the other side of the picture, under this agreement, the president is given certain authority to inaugurate processes leading to the determination of questions that arise under the contract, which is an advantage.

Q. You would say, then, on balance of all the results, that it comes out practically the same?

[fol. 4172] A. About the same.

Q. Mr. Roig, are you acquainted with the arbitration provisions of Agreement A? I believe paragraph 25. I wanted to ask you something about the American Arbitration Society but if you are not acquainted with that, I will address that to Mr. Friendly.

A. Yes, if you will please. He knows more about it than I do.

Q. Does Paragraph 25 refer only to the arbitration of disputes arising under Agreement A or Agreement B?

A. It was my understanding that 25 in "A" refers to disputes under that contract and that the analogous paragraph, No. 9 in "B", the disputes arising under "B".

Q. What would happen under Paragraph 5, Mr. Roig, if all the officers of the American Arbitration Society turned out to be in any way associated with one of the parties here?

A. Well, I guess that is something that hasn't been provided for. Lawyers always leave out something.

Q. Is it your understanding of these arbitration provisions, that if one of the parties refused to arbitrate, that the arbitration can go on without them and proceed to a successful conclusion, or to a conclusion, I should say?

A. I can't answer that question, but I should assume that the party could not block the arbitration by refusing to appear.

Mr. Gesell: (Mr. Examiner, the New York statute is clear on that.)

Mr. Highsaw: That they have to proceed?

Mr. Gesell: Yes.

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[fol. 4173] By Mr. Highsaw:

Q. Mr. Roig, I would like to take up with you for just a moment, this matter of the Board's power over the contract in the future, in event it should approve either one or both of these agreements.

I have understood you already to say that it was your understanding that the Board could in the future disapprove the contract if it should decide that it was in the public interest:

Do you know whether that fact was ever transmitted to the directors of Panagra while they were considering this contract?

A. I am sure the directors were fully conscious of it.

Q. You mean either you or Mr. Gesell told them of the fact?

A. I don't recall by what process, but after all, I am a director myself, I certainly was fully conscious of it.

Q. Mr. Roig, you wouldn't consider that a Board approval of either contract A or Contract B, if it should take jurisdiction of Contract B, would in any way create a moral or any other kind of obligation on the Board to continue the approval for any particular length of time?

A. Well, I think the Board is bound by law, not by moral obligation of that sort. I think whatever the legal implication is, that is what it would be.

Q. Would you, Mr. Roig, as president of Panagra, object to the amendment of the contract to reflect the Board's continuing jurisdiction over all of it or any part

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[fol. 4174] of it if that should prove to be the case?

A. What do you mean "if that should prove to be the case?"

Q. It is possible that the Board might decide that it didn't have continuing jurisdiction over it, but if the understanding that it does have continuing jurisdiction is true, would you object to the amendment of the contract to reflect that?

A. Well, I would like advice of counsel on that, but as far as the purely business angle of it is concerned, I would not object.

Q. Aside from advice of counsel, then, you would not object; is that your position?

A. Yes.

Q. For a moment I would like to refer to your statement about the extension of Panagra or Panags coming into the United States, in Docket 525.

I believe you stated in cross examination, not cross examination, yes. I guess it was cross examination.

Mr. Gesell: What page?

Mr. Highsaw: Early in Mr. Gambrell's cross examination, I am going to quote only one word.

Mr. Gesell: All right.

By Mr. Highsaw:

Q. — that you construed this agreement as meaning the Board's mandate in Docket 525 "in substance", I believe that is right,

A. Yes.

Q. Either "in substance" or "substantially". Yes?

[fol. 4175] A. Yes.

Q. Could you clarify that statement for us a little bit?

A. Is it the word "mandate" or "substantially"?

Q. Substantial.

A. I think the language of the Board's decision in 525 reads in terms of an extension of Panagra's route to the United States, and taking that literally, this is not an extension of Panagra's route, but substantially I consider it, especially from the public angle, as providing the public with the service contemplated by the Board's decision.

Q. Would you refer to Agreement A again, Mr. Roget. There is one point in paragraph 1 that I don't believe has been covered.

If it has, I will withdraw the question. I am a little confused by the provision in there that the Panagra plane will be taken by Pan American and flown from the Canal Zone to the continental United States, and to return operations from Canal Zone over "the same route".

What I have in mind is in the event Pan American should be awarded domestic routes to other points in the United States, would that provision mean that when one of the Panagra planes was flown over those routes it would have to come back over the same way, couldn't be sent to another domestic point and come back over another route to Balboa?

A. Priima facie it would be the former, because if one of our planes was taken up to Chicago, for instance, we would want that to bring our Chicago traffic back, and not have it go 'around to New York and then leave the Chicago berth uncovered, but I suppose it wouldn't pre-

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[fol. 4176] vent a substitution as long as our plane was kept in position in the schedules.

Q. Do you contemplate, Mr. Roig, that the Panagra flight crews which are going to continue on these planes north of Balboa, will wear any different kind of uniforms than they have been, or will they have any sort of insignia on their uniforms to indicate their status?

A. I had assumed they would wear their Panagra uniforms and insignia which are—I think the uniforms are entirely identical, the insignia, almost so.

Q. There won't be any kind of Pan American insignia on them, then?

A. It hadn't occurred to me that there would. There can be.

Mr. Gesell: Mr. Highsaw understands, I am sure, from looking at the folder of our exhibits, what the similarity of the two insignia is. On the face of our exhibits appears both the Pan American and Panagra insignia. It is probably not in evidence, as Mr. Schneider points out.

Mr. Schneider: I am not pointing it out.

The Witness: You would have to look very closely to notice a difference.

Mr. Gesell: Those insignia are there.

— By Mr. Highsaw:

Q. Referring to paragraph 2(b) of the agreement, Mr. Roig, what kind of operating experience is contemplated in that provision as a basis upon which to extend the operations to Boston and other points?

A. What kind of operating experience?

Q. That is right.

A. You mean flight operations?

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[fol. 4177] Q. Does that refer to some technical experience or difficulty in operating?

A. I don't see the clause.

Q. It is the next-to-the-last line in paragraph 2(b).

A. "Provided operating or traffic experience demonstrates the desirability thereof."

Q. Yes.

A. I was thinking of something else. Well, the traffic experience, of course, means the volume of traffic offering between the points, and the operating experience means the standpoint of

the feasibility of the stops from operating schedules and similar considerations.

In other words, the—it is referring to technical operating technique, such as the CAA controls.

Q. What is your understanding, Mr. Roig, as to who will make the decision as to that operating and transfer experience under paragraph 2(b)?

A. I assume it would be made by mutual agreement, or failing that, by arbitration.

Q. That isn't specifically spelled out there.

A. No, but in a number of places where it isn't specifically stated, I assume is a matter of contract interpretation, either parties entitled to take the position that traffic or operating experience does demonstrate.

Q. That is your understanding?

A. Yes. The other party may agree. If he doesn't, it is a controversy to go to arbitration.

(Off the record)

By Mr. Highsaw:

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[fol. 4178] Q. Mr. Roig, referring to paragraph 2(c) of the contract - Contract A - what is your understanding as to the phrase "In the light of competitive conditions" that appears therein?

A. Well, that has to be read together. If that route is obtained through flights may be made by Panagra aircraft under this agreement between the Canal Zone and New Orleans to such extent as Panagra shall determine.

appropriate from time to time in the light of competitive conditions and the relative amount of traffic available for such route."

I understand that to mean that if we decided that there was not enough traffic to justify our operation of the route either because of intensive competition which left no room for us, or for any other reason, we would not be required to provide the plane for that trip.

Q. Referring to paragraph 2(e), Mr. Roig: In the pre-hearing conference, Public Counsel raised some question about that, and your counsel had you specifically answer it, and as I understood, your answer was to the effect that this paragraph was for the purpose of preventing Pan American from using Panagra's planes on other routes.

You said it might have been an inartistic way of stating it, but that was the intention of the paragraph. Would you have any objection, then, to deleting or modifying or rewriting this paragraph in the event of approval of this agreement?

A. If it isn't entirely clear, I would have no objections, again subject to the opinion of counsel to prevent implications that might arise in some other direction, but I certainly have no objection to anything being clarified

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[fol. 4179] that needs it.

Q. It did contemplate that there might be an operation by Pan American over some other routes sometime, didn't it?

I don't quite understand that "mutual consent"; what purpose that would serve otherwise.

A. I think perhaps Mr. Friendly or Mr. Gesell, who know the detailed discussion, may have a better answer. It might be, however, that the idea had been that: for instance, suppose a Panagra plane were at Miami and were, in normal course, scheduled to go tomorrow, let's say, back to Balboa, today it was ready to go and some situation—Pan American might have a shortage of equipment at the moment and it would be a convenient thing to send it over to Puerto Rico—there wouldn't be any objection to doing that, providing it was mutually agreed

to. That could be done irrespective of the contract, but Pan American couldn't just automatically decide that that could suit and send it over.

Q. If that were done, would all of the terms of this contract apply to the operation of that plane you were referring to?

A. No.

Q. It would not?

A. The terms of this contract would not apply, to my understanding, to any operation other than those specifically referred to in the contract.

Q. That would have to be a matter of separate agreement between Panagra and Pan American?

A. Yes. That would relate only to the physical use of the plane, not to the extension of the contract.

Q. If this provision 2(c) were left in Contract A, would

fol. 4180 you contemplate that the kind of agreement you were talking about would be submitted to the Board for approval?

A. Well, in my Puerto Rico illustration, I presume that all that would happen would be that the plane would be chartered to Pan American.

Q. And you wouldn't contemplate submitting that kind of agreement?

A. No, unless a charter agreement has to be submitted. I don't know whether it does or not.

Q. Referring to Paragraph 2(a), Mr. Roig, at the top of page 4, the second sentence. The agreement there reads "subject only to operating or other conditions beyond" or

5 Panagra's or PAA's control."

What is your understanding as to the other conditions?

A. That is simply the usual force majeure clause. It doesn't cover anything beyond our control.

Mr. Gesell: Mr. Gambrell, our Latin expert, isn't here.

By Mr. Highsaw:

Q. Referring to paragraph 4, the requirement in that paragraph that "Pan American and Panagra will consult to cooperate in establishing schedules for the benefit of through traffic," between the United States and points on Panagra's routes in South America. Does that contemplate that the schedules will be established primarily for the benefit of that traffic?

A. Yes. As appears in a number of places, the Panagra plane is intended to be so handled as to accomplish its intended purpose of providing through flights of Panagra traffic.

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[fol. 4181] Mr. Gesell: You understand, Mr. Highsaw, that clause relates only to the schedules that are going to utilize Panagra aircraft. Not to all Pan American schedules.

Mr. Highsaw: That is between Miami and Balboa?

Mr. Gesell: Right.

The Witness: Yes.

By Mr. Highsaw:

Q. Is it your understanding that under this agreement Panagra has absolute control of schedules for this through operation in a case that you can't agree.

A. Yes. I think under this next language Panagra is given certainly an important role in the determination of the schedules on which our own plane is operated, and has no bearing on any other schedules that Pan American may put into service.

Q. Mr. Roig, I would like for you to clarify just a little bit. You said "an important role". I was wondering if you had control over it. As I read the agreement, if you and Pan American couldn't get together, then you could set the schedules, and I was just wondering whether that is a correct reading.

A. Well, it doesn't exactly say that. What it says is that Panagra shall fix the hours of arrival of northbound

through flights at the Canal Zone. That means that we determine when our plane northbound gets to the Canal Zone. That doesn't say that we fix the exact moment when Panair carries that through. It does imply that if we are going to have a through flight it should be carried through with reasonable dispatch, but it doesn't give us control

for 4182<sup>1</sup> of that schedule, and similarly southbound we decide when the plane will leave Balboa, and Pan American should have it <sup>453</sup> leaving there to go on at that point, but that doesn't enable us to fix the departure hours from New York or beyond.

Q. Pan American isn't obligated under the contract, then, to meet that schedule that you set?

A. Oh, yes. I think they are.

Q. They are?

A. Oh, yes.

Q. And if they fail to do it, it would be a violation of the contract, within your understanding?

A. Yes. Oh, yes.

Q. Would Pan American's failure to adjust their own schedules so as to meet those schedules that you set in and out of Balboa be a kind of dispute which you would regard as coming within arbitration provisions of the agreement?

A. Yes. You see, that involves such questions as how much time they are going to allow at the airport, how fast they are going to run the planes.

We have no control of that. That is their operation.

Q. But if they didn't set them to satisfy you, as meaning that you would be able to arbitrate that question within your understanding of paragraph 25?

A. Precisely; if we thought they were unreasonable.

Q. Turning to paragraph 6 of the agreement, Mrs. Reig: In the handling of the passengers, passenger service and handling of traffic under that agreement, could you give us some sort of a clarification as to the time when Panagra's control ends going north and Pan American's control begins?

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(fol. 4183) begins under this provision, and vice versa?

Mr. Gesell: Mr. Examiner, I think those questions are more appropriate for Mr. Kirkland and Captain Brock, who is concerned with the operating details of the Canal.

Mr. Highsaw: That is perfectly all right.

Mr. Gesell: It is complicated by the fact that as you know, Pan American already has a relation to Panagra's operation south of the Canal.

Examiner Wrenn: Let's take a five-minute recess.

(Short recess)

[fol. 4184] Examiner Wrenn: You may proceed.

By Mr. Highsaw:

Q. I believe we were on paragraph 6, Mr. Roig. Is it your understanding of that agreement that any question relating to Pan American's obligations under this provision would be subject to arbitration under paragraph 25 if you were not satisfied with the way they were carrying them out?

A. Yes.

Q. Let's look for a moment at paragraph 8 of the agreement, Mr. Roig?

A. Yes.

Q. Just a moment. Before we go to 8, I would like to ask the same question with respect to paragraph 7 that I asked you with respect to paragraph 8.

If you weren't satisfied with the way Pan American was carrying out any of its obligations under that paragraph, is your understanding that you could take that to arbitration?

A. Yes.

Q. Referring to you paragraph 8 now, has there been anything done so far as you know in the development of the training plans which were referred to there?

A. Yes. Mr. Kirkland has been working on it and he can tell you exactly what primary progress has been made.

Q. In the pre-hearing conference Public Counsel raised the point about the provision in paragraph 8 relating to compensating Pan American for the training that is provided in that paragraph.

(fol.4185) Your counsel asked you yesterday your understanding with respect to the filing of any agreement for such compensation with the Board and I believe you stated that you had no objection if there was any legal reason or any reason to make it desirable. That last confused me just a little bit, Mr. Rong.

I wonder what you had in mind by that.

A. I had in mind if the Board considered they would like to have it that would make it desirable in my mind.

Q. Even though you didn't think you legally had to file it, is that right?

A. Yes.

Q. Referring now to paragraph 10 of the agreement, Mr. Rong, this may have been asked before. I am not quite sure. Is there at present some sort of a sales agency agreement between Pan American and Panagra?

A. Well, we touched on that this morning. Part of the services which Pan American render Panagra, for which they receive a management fee, about which you were speaking a moment ago, part of those services consist in acting as sales agent for Panagra in the United States.

But as I explained this morning in some detail on a basis which is quite different and in our opinion much more effective than the plan provided by this contract.

Q. Are they going to continue to be paid as a part of the management fee, or are you going to arrive at some separate basis of compensation?

A. That is one of the things that I had in mind specifically when I said that the management fee would have to be

(fol.4186) revised to accommodate itself to the changes effected by this agreement.

Q. Then you intend to reach some sort of a separate adjustment agreement with respect to this matter?

A. Yes.

Q. I take it, it is also your understanding that any of the matters in paragraph 10 that are not carried out to your satisfaction can be made a subject of arbitration under paragraph 25 if you so desire.

A. Yes.

Mr. Gesell: If I may interrupt.

Examiner Wrenn: Certainly.

Mr. Gesell: While we are trying to understand the contracts, You will have in mind that there are more detailed provisions concerning how that is to be arbitrated in the Grace-Pan Corp. contract which discusses it.

Mr. Highsaw: You mean the procedure?

Mr. Gesell: Procedure for handling any unsatisfactory performance by PAA as general sales agent.

The Witness: Paragraph 4 of contract B.

Mr. Highsaw: It will be arbitrated under one of the procedures.

The Witness: Oh, yes.

Mr. Gesell: My point is that in this instance the standards are clearly defined in the other contract.

Mr. Highsaw: In contract B.

Mr. Gesell: Yes.

By Mr. Highsaw:

Q. Referring to Paragraph 11, Mr. Roig, there was con-

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[fol. 4187] siderable discussion about the personnel of Panagra referred to therein and I believe you gave quite an extended discussion as to the particular reasons why you felt they were needed.

The one point that wasn't clear in my mind was whose direction will those personnel be under when they are at the Pan American bases performing those services that you mentioned?

A. Panagra in that case.

Mr. Gesell: If there is any detail about that, Mr. DeGroot can give it.

Mr. Highsaw: I didn't want to go into detail. I just wanted to ask the general question.

By Mr. Highsaw:

Q. Is it your understanding that any question in regard to their performing those services that there might be a dispute about is subject to arbitration under these agreements before us.

A. Well, yes to the extent that it involves any relationship with Pan American. To the extent it involved any question between Panagra and its own employee that is a different matter; but if Pan American should fail to provide reasonable access for these persons or, in other words, made it impossible for them to function, that would be a matter to be arbitrated with them.

You see some of these provisions like the one we just spoke of about termination of the sales agency where there is specific arbitration provision in paragraph 4 of contract B, some of those things are specifically covered by

[fol. 4188] specific arbitration provisions but all of those others are covered by the general language of Section 25 and all

which says "Any ~~material~~ disputes as to the construction or operation of this agreement shall be submitted to arbitration."

Q. Let me ask you something at this point—I was going to ask it later but it would probably be well to bring it up now.

Mr. Roig, what was the reason for according the sales agency problem a particular treatment in paragraph 4 of contract B in treating all of these other questions under the provisions of paragraph 25 of the contract A?

A. The sales agency, for example, and the management question, and the Grace President, are a different category than the other questions, partly because of their importance and partly because the machinery provided there is one which may result in termination of this contract.

The other cases don't contemplate winding up in a termination of the contract but in merely a termination of the dispute.

Q. You regarded the sales agency services then of particular importance in this contract?

A. Oh, yes, because it is the proper administration of that sales agency provision that enables Panagra to maintain its independent and competitive position.

Mr. Gesell: I think perhaps for clarity, Mr. Examiner: the witness misspoke in referring to the termination of the agreement when I think he meant the termination of

the sales agency arrangement or the termination of the management and I don't want any confusion about what the contract provides.

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[fol. 4189] The Witness: That is correct.

By Mr. Higlisaw:

Q. Then the sales agency part of it can be cut out of the contract without affecting the rest of it, is that right?

A. Under that provision.

Q. Paragraph 13, our old friend, is back, Mr. Roig. I believe that you said that one of the purposes of the kind of arrangement contemplated by paragraph 13 was to eliminate destructive competitive practices between PAA and Panagra.

If that is so, could you clarify and enumerate for the record some of the destructive competitive practices you have in mind as contrasted with what you might consider good competitive practices?

A. Well, I think an outstanding example of a destructive competitive practice was the—it is a good many years ago now—but when United and American began advertising which went over the highest mountains between the East and the West Coast of the United States—things—which—practices and sales methods—which have a tendency to sacrifice the development of air traffic as a whole in favor of a momentary advantage of a particular company. That is a rather outstanding kind of thing that I call destructive competition.

Q. Do you have in mind anything else particularly for that?

A. Well, there are, in transportation history, a good

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[fol. 4190] approval of this contract would not represent in this principle or substance an approval by the Board of a concept of an agreement such as involved in paragraph 13(a).

We would consider that would have to be looked upon its merits from A to Z under the conditions which prevail at that time under the terms of the agreement.

I presume Pan-American would agree to that stipulation.

Mr. Hamilton: Yes, I would join in that stipulation on the part of Pan-American.

Examiner Wrenn: All right, is that sufficient for you, Mr. Highsaw?

Mr. Highsaw: That is sufficient.

By Mr. Highsaw:

(Q. Referring to paragraph 19 of the agreement, Mr. Roig: there was considerable discussion in cross examination about what the Board of directors of Panagra could or could not do under this section and there was some specific talk about equipment, but I don't believe that the line of demarcation was ever very clearly drawn and I would like for you to clarify it as much as you possibly could.

A. Well, my understanding is that the Board of Directors of Panagra retains all the powers and prerogatives which pertain to a board of directors under corporate law, except as that may be modified by this contract in these limited respects.

Q. Just exactly what is your understanding as to those limited respects?

A. Well, they are stated here. It says: "Pan American agrees that any action to make any claim or take any

[fol. 4191] position or to enforce any rights of Panagra under this agreement may be taken on behalf of Panagra by its President."

I understand that to mean that if such a claim arises, or the necessity of taking such a position or enforcing any rights of Panagra under this agreement, that instead of going to the Board of directors and getting their approval to corporate action, that in those particular kind of instances the President is authorized to act on his own initiative.

Q. Just one more point, Mr. Roig:

Turning to paragraph 14 of the agreement: at the pre-hearing conference Public Counsel raised some question about agreements for the relative contributions to the advertising that is provided in there.

Yesterday your counsel asked you to state your position on that, and as I understood it, you stated your position to be that such agreements for the division of the relative contributions contemplated there will automatically come before the Board in its first rate case.

A. Yes.

Q. Do I understand from that that you do not intend to file any agreement concerning such contributions for the Board's approval under Section 412?

A. Well, if counsel advises that the filing of such an agreement were required, of course, that would be done too.

Mr. Highsaw: Will counsel state now what their contemplation is on that score?

Mr. Gesell: I have never been able to understand the [fol. 4192] point Mr. Highsaw raises. If the Board of Directors of Panagra meets and decides that Panagra will contribute "X" dollars to a joint advertising program which has been laid out by Pan American and Panagra, I have not assumed that that action of the Board of Directors required filing of 412. I had also not assumed that if Mr. DeGroot and some representative of Pan American get together and discuss the question of how Pan American's and Panagra's services and routes and schedules will be advertised in the time table, that when they get back they both have to sit down and draw up a memorandum and file it under 412 and get approval.

The net effect of it from my point of view, and the advice that I would give, unless some basic program is decided upon, involving some continuing allocation, I would advise that it is not necessary to file under 412.

Mr. Highsaw: That is sufficient answer.

Thank you very much, Mr. Roig.

Examiner Wrenn: Do you have anything on redirect, Mr. Gesell?

Redirect examination.

By Mr. Gesell:

Q. You stated on questioning by Mr. Hickey, Mr. Roig, that speaking for Panagra you were anxious to go into this agreement for the purpose of facilitating Panagra's ability to compete with other carriers, and explained your reasons in some detail.

Mr. Hickey was quite careful on three occasions to say that you were speaking for Panagra. Would your answer be the same if you were speaking for Grace?

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[fol. 4193] A. Absolutely. I have been with W. R. Grace and Company thirty years. I have lived in an atmosphere of competition all my life. I wouldn't know how to live in any other atmosphere. I have always believed in competition and practiced it.

I was for a number of years in charge of the import department of W. R. Grace and Company, dealing in big basic commodities—coffee, cotton, wool—things which are the most competitive articles in the world.

I have always been in competitive business. Grace Line has always had competition. Panagra has generally had competition. Certainly W. R. Grace and Company's whole career and whole philosophy has been one of living in a world of competition.

Q. Was it your intention or the intention of Panagra or the intention of Grace to enter into this agreement for the purpose of keeping competitors off your neck?

A. Well, not in any such sense as that might sound. It was for the purpose of enabling us to maintain our own position in competition with Pan American and Grace Line and all comers, and without through service which this provided we just wouldn't be in a position to do that.

On that whole subject of competition and the attitude of Grace on the subject I might say that when the question of a chosen instrument was up I came down here as an officer of W. R. Grace and Company and testified before the Senate Committee against the idea of a chosen instrument and in favor of a competitive philosophy in aviation.

I don't think competition coexists in me just tying my

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[fol. 4194] hands behind my back and not being able to provide the public with a competitive service when everybody else is being put in a position to do it.

Q. Has Panagra or Grace denied facilities to Braniff Airways in the development of its routes in South America?

A. On the contrary, we have offered them our facilities and they are using them.

Q. What facilities do you speak of?

A. I speak of ground facilities and radio, and line maintenance on this survey flight.

Q. Do you consider that Panagra will be in a position to compete with Braniff or with the Braniff-National service, providing through connection at Havana in the event your traffic does not go through north of the Canal on your own planes?

A. I do not think in that case we would be able to compete.

Q. Mr. Schneider asked you whether Houston was left out of the agreement deliberately and you said it was left out deliberately. What did you mean?

A. Well, I think what I meant was that when we were considering service to different ports of entry, Houston was mentioned as one possibility. It was left out because we didn't feel that we could serve all the ports of entry with adequate traffic from our route in South America.

Q. Was it left out on any notion that you did not want to compete with Braniff?

A. Oh, no.

Q. Does Panagra have American competition from non-

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[fol. 4195] scheduled operators in this region—charter operators?

A. Yes, there have been a number of charter operators flying down there—Skyways—and some of them are now seeking to regularize their operations.

I think both Skyways and Veterans Airways have applied for certificates in our territory.

Q. Do you consider the provision of the agreement that the through flights must initiate at Lima or a point south

thereof as restrictive of your competitive position in any way?

A. Not at all.

Q. Mr. Gambrell, in asking you about the competitive exhibit in this proceeding,—I think it is Exhibit 4—was quite careful not to ask you about BOAC.

Do you contemplate that—

Mr. Gambrell: I object, Mr. Examiner, to Mr. Gesell's talking about my being quite careful not to do something. I don't think there is any justification for any such statement.

Examiner Wrénn: You don't object to the fact that you not did ask about BOAC, do you? Is there any question there?

Mr. Gambrell: I just object to his characterizing my question in any such way.

By Mr. Gesell:

Q. Mr. Gambrell did not ask you about BOAC in discussion of Exhibit 4.

Do you consider that you will have competition from BOAC?

A. Definitely. We have it today. That isn't anything [fol. 4196] in the future. The British line is operating today between our most dense traffic centers—Buenos Aires and Santiago.

Under one of these international agreements, I think the Bermuda one, they have been authorized to operate a route from New York down the West Coast paralleling our international route all the way.

Q. Have you any reason to believe that American citizens and citizens of other nationalities such as you carry on the Panagra route will be carried on BOAC?

A. Certainly they will. The Chairman of the CAB just traveled on that line to Europe. It is a perfectly good line and a well run line. Lots of Americans travel on it.

Q. Mr. Gambrell asked you concerning Grace Line, whether or not it would seek to divert passengers from Panagra to Grace Line.

Would you consider that good business?

A. Well, I consider that the Grace Line will seek to sell traffic by water and will offer such inducements as it has in the way of an ocean voyage which is an appeal to a great many people.

In doing that they will not in any way, remotely or to the slightest extent, interfere with Panagra's seeking to sell a parallel trip, if you like, by air.

Q. Would you say that the extent of the activity of the Grace organization on the West Coast of South America, in developing traffic for Panagra has lessened or increased over the years?

A. I think it has increased, and I think in the earlier

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[fol: 4197] years it was one of the things that had perhaps more than any single thing to do with the rapid development or the rapid acceptance of air travel in that area.

Mr. Gesell: That is all.

The Witness: Mr. Examiner—

Examiner Wrenn: If the witness has a firm statement to make, go ahead.

The Witness: All I was about to say before leaving the stand, in looking at the transcript I noticed some corrections that ought to be made in my testimony.

For instance, it stated that the director's meeting which approved this contract was held on June 30. It ought to be on July 30. There are quite a number of other points. I would like the opportunity of having the record correct.

Examiner Wrenn: On that point if you have an opportunity to go through during the course of this hearing and file them before the end of it and we will do so and if not, provision will be made whereby you can file them after the close of the hearing.

Mr. Schneider: May we conduct the usual recross examination?

Examiner Wrenn: Not unless there are points arising out of what Mr. Gesell has brought up.

Mr. Schneider: I will let someone object if I violate that principle but may I proceed on the recross examination?

Examiner Wrenn: Does it arise out of points that have been brought up subsequently?

Mr. Schneider: I think so or I wouldn't be asking them.

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[fol. 4198] Mr. Examiner.

Examiner Wrenn: All right.

Recross examination.

By Mr. Schneider:

Q. You stated in answer to a question by Mr. Gesell that you didn't think Panagra could compete effectively with a National-Braniff combination by connection at Havana. Will you give your reasons?

A. I understood him to say that we couldn't compete effectively with the Braniff-National hookup if we remained deadended at Balboa.

Q. That is right.

A. The reason is that, speaking merely now of competition with Braniff, that Braniff has direct connection to some points in the United States, direct through plane, through carrier service, that through National at Havana they have a hookup with Eastern Territory and with Chicago and Southern at the New Orleans territory, and I would expect—I might be wrong in this—that it would not be long before there would be some interchange or some agreement like this worked out between those companies, because I am sure you will find before you have been operating as long as I have, that that is the way to run that kind of service, and that you have got to have something to get over this breaking point.

Q. All right.

Now, if the agreement A and B are approved, you then would be able to fly your ship as far as Miami and will be

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[fol. 4199] able to provide two plane service to the eastern part of the United States, will you not?

A. That is right.

Q. And that will be substantially the same type of service that Braniff and National will be able to offer in the absence of an interchange between the eastern part of the

United States and West Coast of South America, is that correct?

A. I am not sure I quite understand your question.

Examiner Wienn: Read the question.

(Question read)

By Mr. Schneider:

Q. Do you understand the question, Mr. Roig? If you don't I will be glad to rephrase it.

A. I am afraid I don't.

Q. All right. There was a question preliminary to that to this effect, that if agreement A and B are approved here, Panagra will then be in a position to provide two plane service between the West Coast of South America and New York?

A. Yes.

Q. That is by connection with carriers at Miami?

A. That is right.

Q. And that will be substantially the same type of service as Braniff and National can provide between the same points in the absence of an interchange?

A. Yes.

Q. Now, if Pan American is successful in its domestic route case; in being extended from Miami to New York,

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[fol. 4200] Panagra then will be in a position of providing one plane service from the West Coast of South America to New York, will they not?

A. That is right.

Q. Would you at that time oppose an interchange between Braniff and National which would seek to provide the same one plane service between the same points?

A. Well, that is a hypothetical question based on two things that are not yet in existence. I think I testified yesterday—and I stand by it—that I would not, in principle, oppose this type of an agreement in any situation where it was comparable; and I think the one you speak of would be comparable.

Q. Even if it would be competitive?

A. Now, there might be other factors in connection with it that will present themselves at that time, and I certainly am not going to make any commitment one way or the other, but my opinion would be that on principle I couldn't see any objection to that sort of arrangement.

Mr. Schneider: That is all.

Examiner Wrenn: Anything further of the witness? You had a question, Mr. Highsaw?

Mr. Highsaw: I want to clear up one point here. I believe Mr. Roig said he had competition now with BOAC and then he mentioned something about BOAC flying between Buenos Aires and Santiago and it left me in a little doubt as to whether or not they were flying between Balboa and down the West Coast of South America at the present time.

The Witness: Not as yet. At the present time they operate [fol. 4201] ate—the subsidiary has some other name—but the British Line operates between London and Buenos Aires, and then extends over to Santiago.

Mr. Highsaw: Thank you very much.

Mr. Hickey: Mr. Examiner, I have one question suggested by the redirect.

Examiner Wrenn: All right, Mr. Hickey.

Recross examination.

By Mr. Hickey:

Q. Mr. Roig, I believe you just stated to Mr. Gesell that you favored competition, is that correct?

A. Yes.

Q. As, among other reasons, being in the public interest?

A. Yes.

Q. And you also favor this agreement, do you not?

A. Yes.

Q. And you testified that by this agreement competition between Panagra and Pan American north of Balboa to the United States was impossible, is that correct?

A. By a belief in competition I—

Q. Excuse me. Didn't you testify that it was impossible?

A. The record will show exactly what I testified. I think I testified that there never had been competition between these companies between those points and that that condition would remain unchanged under these agreements.

Q. These agreements necessarily precluded competition did they not, between those two points?

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[fol. 4202] Examiner Wrenn: Between those two carriers.

Mr. Hickey: Between those two carriers and these points.

A. So long as these agreements are functioning and Panagra has not been granted a route in that area, which I, for one, have tried for a good many years unsuccessfully to get, there would not be competition, but I don't consider I am under any obligation to compete with people who are flying between London and Paris, some place where I have never flown before, between Shanghai and Calcutta. Over the route I have been flying, that I have been certified to operate. This agreement will definitely and substantially increase our ability to compete with Pan American Airways for Buenos Aires traffic and not only with Buenos Aires but with other competitors.

Q. In other words, your belief in competition amounts to this: that you are willing to sacrifice a competitive opportunity for the sake of getting Panagra's line extended to the United States, isn't that correct?

Mr. Gesell: That is an argumentative question.

A. That is not correct, Mr. Hickey, and I really don't feel it is a fair question. I don't consider that I am sacrificing something that I have never had, that I have worn are

my hair grey and my bones bear trying to get, a great deal of the effort being not only with Pan American Airways but with the Civil Aeronautics Board and the United States Courts, and have been at every stage of the game refused.

Now, how could you say in the light of my performance

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[fol. 4203] and my effort to get this route, that I am now

is an  
prepared to sacrifice for it what you say in elimination  
of competition. I don't agree with that. I consider it an  
absolutely unfair conclusion.

Q. I don't consider it unfair at all.

A. That is my opinion.

Examiner Wrenn: Let's don't argue with the witness.

Mr. Hickey: I am not arguing, Mr. Examiner. I am  
merely trying to clarify my statement here.

Examiner Wrenn: Go ahead.

By Mr. Hickey:

Q. I quote agree that your efforts have been rigorous  
and that you have made every effort to obtain it. I am  
merely stating that what you have done now, you have  
merely precluded yourself from making the effort that you  
have made so arduously in the past. That is a fact, is it  
not?

A. Well, I expect I have precluded myself for the time  
being, but there comes a time when you just can't bang  
your head against a stone wall forever.

When everybody who has authority to give you what you  
want refuses to give it to you, you have to do something  
to improve the competitive position in the rest of your pic-  
ture.

Mr. Gesell: When you say that you precluded that you  
mean, do you not, if the Board determines that this agree-  
ment and arrangement furthers the objectives of the Act?

A. Certainly.

Mr. Hickey: As far as Mr. Roig is concerned he has pre-  
cluded himself. He signed the agreement as far as Panagra

[fol. 4204] is concerned. That is all.

Examiner Wrenn: All right. You may be excused Mr.  
Roig.

Thank you, sir.

(Witness excused)

(Discussion off the record)

Mr. Schneider: Mr. Examiner, I would like to state now for the benefit of other parties that Braniff Airways does not expect to put on an affirmative case in view of the stipulation agreed upon this morning, but I would like to state in explanation of some of the questions I have asked, which involved a proposed or contemplated interchange in the future between National and Braniff, that no such agreement is presently under contemplation nor have any discussions been held between the two companies. I raised the question only as a hypothetical question.

Examiner Wrenn: Now, as a matter of procedure, Mr. Friendly will go for Pan American at this time.

Mr. Hamilton: That is right.

Examiner Wrenn: And you will alternate back and forth rather than the Pan American witnesses testifying consecutively?

Mr. Hamilton: Yes. If that is agreeable.

Examiner Wrenn: That is quite agreeable.

#### PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 421

HENRY J. FRIENDLY, was called as a witness, having been first duly sworn, was examined and testified as follows:

Mr. Hamilton: If the Examiner please, I have here a document entitled, "Experience and Qualifications of Henry

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[fol. 4205] J. Friendly, which I should like to have marked for identification.

Examiner Wrenn: All right. That will accompany the combined exhibits of Pan American and Panagra which have previously been marked.

Mr. Hamilton: It has not been marked.

Examiner Wrenn: Now, but I am directing that it accompany the exhibits which have previously been filed.

Mr. Hamilton: And will be marked consecutively.

Examiner Wrenn: That is right. That will be Exhibit 31.

(Pan American's Exhibit No. 31 was marked for identification.)

Direct examination.

By Mr. Hamilton:

Q. Mr. Friendly, are your education and experience correctly stated in Exhibit No. 31?

A. Yes, they are correctly stated, but I would like to add a little bit to them.

Q. All right.

A. I think that, except for Mr. Trippé, who is leaving tomorrow for Europe to attend some meetings connected with International Air Transportation, my knowledge and experience relating to Panagra go back longer than any officer of Pan American at the present time—back to 1929. I think about a month after I first had any acquaintance with Pan American.

Since that time I have had the privilege of conducting certain legal matters for Panagra in addition to those that I have conducted for Pan American, including, if I might

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[fol. 4206] mention one, assisting Mr. Roig in the work that he described in connection with the elimination of German Airlines in Bolivia and Ecuador.

For a time I was a director of Panagra. I think that I might add also, since it is a little unusual for me to be on this side of the table, two special reasons that led me to appear here.

One is that, as has appeared from testimony that has already been given, I did play an active part in the making of this agreement, and felt that my testimony might well be required in any event.

The other is a somewhat personal note which I hesitate a little bit to advance, and yet do, perhaps in anticipation of possibly becoming somewhat intense about this later on:

I feel very proud of having played a part in the conclusion of this agreement. I think it was one of the greatest services that I have ever been able to render and that it was a service not simply to Pan American but to the public, and I felt that, having carried it as far as I had, that I ought to do anything I could to make my knowledge of it available to the Examiners and to the Board.

Q. Mr. Friendly, I direct your attention to Exhibits numbered 1, 4, 5 and 25. Those are the PAA-Panagra exhibits which you are sponsoring—and ask you if they are true and correct?

A. Yes, they are to the best of my knowledge, with one exception, I think.

Exhibit 4, which shows the competitive picture, shows the lines of TACA de Colombia extending only as far south

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as

[fol. 4207] <sup>A</sup> Guayaquil. Whether or not that was correct at the time the exhibit was prepared, I do not know, but I am informed that they now extend as far south as Lima.

Q. Mr. Friendly, with reference to the agreement, is it the intention of Pan American, in entering into that agreement, to impose any restraints on air transportation?

A. No. It was the intention of Pan American to free air transportation from a barrier that it is now subject to, namely, the necessity of changing from one plane to another at Balboa.

Q. Was it the intention of Pan American, in entering into that agreement, to impose any restraint on Panagra?

A. No. On the contrary, it was our intention to enhance Panagra's ability to obtain traffic, and to obtain it not only against other companies but against Pan American.

Q. Was it the intention of Pan American to impose any restraint on Braniff?

A. Certainly not. It was our intention simply to develop a method whereby Pan American and Panagra, together, could handle more effectively, and give better service to the public, traffic which they have been authorized to handle for years, in competition with Braniff. There was some reference to the phrase "getting together" and it is perfectly true that we got together, but I want to make it perfectly clear that all we got together to do was to provide the same type of through plane service on our routes which the Civil Aeronautics Board has permitted Braniff to provide on its route.

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[fol. 4208] Q. Was it the intention of Pan American to impose any restraints on Eastern lines?

A. Not in the slightest degree. As far as Eastern Air-

lines' present operations are concerned, it will be decidedly beneficial, in my opinion.

Q. Do you have any additional statement to make as to why you deem the agreement in the public interest?

A. It seems to me that we might get back to what I thought, at least yesterday, was the forgotten man in this case—I mean the man who wants to go from the United States to Lima or Santiago or via that route to Buenos Aires, or the Chilean or Peruvian or Bolivian who wants to come to this country.

I think what Mr. Patterson used to call the man with the suitcase. We have been hearing a great deal about Braniff and Eastern and Pan American and Panagra, but the basic purpose of the agreement, and its greatest advantage is for the fellow who is going down to South America or coming from it and who, but for this agreement, might be put out at Balboa in the middle of the night, and would be put out at some time.

It seems to me very hard to look at a map of the routes of these companies and not have this idea of the desirability of this type of arrangement impress itself on one.

Q. Mr. Friendly, I now direct your attention to the following question: After the failure of the 1941 negotiations which Mr. Roig has referred to, why wasn't the matter pursued further?

A. I should say there were two reasons. In the first

[fol. 4209] place, the 1941 negotiations failed, either late in November or early in December of that year. There was an important event in the history of this country right at that time and one which made it perfectly clear—at least made it clear within a few weeks—that the 4-engine equipment which we had been talking about was not going to be available to the airlines for some time to come.

Also, at the time that the negotiations were broken off, Grace initiated the litigation with which we are familiar. I think Docket 770 was filed the very day or the day after a letter from Mr. Roig announcing his dissatisfaction with the draft which has been identified here.

While that litigation was pending, we felt that on the whole, there was very little possibility, even after the 4-

engined equipment situation commenced to change—and that wasn't for some years—we felt that there was relatively little possibility that through service arrangements would be very seriously entertained.

Q. What led to the discussions that culminated in this agreement?

A. Mr. Roig has stated the facts as to what transpired, completely and accurately, and I have no reason to add or subtract anything as far as that statement is concerned, except, as I assume you wish me to, to give some of the thinking that occurred on the Pan American side, and which led to the advancing of the proposal at the Panagra Board meeting in early June.

As has appeared from other testimony, the idea of some type of through flight agreement was not new, had been

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[fol. 4210] discussed at various times in the past, but had not been actively discussed recently for the reasons that I have mentioned.

However, we felt that with the coming down of the Latin American decision and the other events that Mr. Roig described, that we ought to give further thought to that possibility of solution.

There were a number of reasons for that. One was that, as has been referred to, the certification of Braniff and the growing competition made it evident that as a business matter, arrangements ought to be made to provide this through service if Panagra and Pan American were to keep any competitive place in this trade.

The other idea, or the other fact, rather, was that it seemed to us that the certification of Braniff put a good deal of different light on an idea that had been talked about a good deal. It had been talked about by Grace, and some of the documents that have been referred to have been talked about in other quarters; namely, the idea of making Panagra, in some form or other, Pan American's competitor in South America.

It seemed to us that the certification of Braniff completely changed that. The president had directed that Braniff be put in practically every point on Panagra's route except in Chile—every important point.

Also, to Rio and São Paulo, the two most important traffic centers in Brazil on Pan American's route; and to Buenos Aires on the route of both Pan American and Panagra, and it appeared to us that the pattern which was now formulating, and which the president intended to have

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[fol. 4211] formulated, was one in which Pan American and Panagra, in cooperation, should compete against Braniff, and the connection at Havana with which Braniff had been provided.

We were impressed also with these remarks in the Board's opinion addressed to the owners of Panagra, to which Mr. Roig referred, and it was for those reasons that we felt, not only that we ought to do anything within our power to advance a proposal that might accomplish the result of making this through service possible, but also that it might be received by our partners, and that it might be developed, and the result was that Mr. Dean and I made the proposal, and I think Mr. Roig has stated what happened after it.

Q. With reference to the agreement, would you care to elaborate in greater detail the specific advantages accruing to the public from the agreement?

A. Well, I mentioned one of them once, but I am going to mention it again, although it is so obvious that somehow it gets buried, and that is that thousands of people will be spared the inconvenience of transferring from one plane to another at Balboa.

Another advantage—and I call it a public advantage—is that it is vital, in our opinion, to enable Pan American and Panagra to maintain and develop the through service to the points to which they are already certificated, against the competition that they are now confronted with, the kind of service that the public interest requires that they render.

Q. What is that competition?

A. Well, I want to start off with Braniff, because it seems to me that there has been some failure to appreciate

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[fol. 4212] the strength of Braniff's position. We have heard some questions of Pan American dominating the east coast, and Pan American dominating the west coast, and there hasn't been much mention of the fact that Braniff

reaches every worthwhile traffic point on both the east and west coasts, except Chile and Montevideo perhaps, which they can reach quite easily through Buenos Aires.

Then we have heard a good deal about the great proportion of the South American traffic that comes from the east of the Mississippi. I think in that connection it is very illuminating to look at the figures in Exhibit PAA-8. I am referring to those at the bottom of the page which show, for the year 1945 and the first six months of 1946 the distribution of the Pan American traffic delivered to Panagra and received from Panagra through the various gateways.

Now, when you analyze those figures, taking the 18 months' period as a whole, you will see that 42 per cent of the Panagra traffic, which is no mean proportion, was from the Western Gateways and not from Miami.

Now, I may add in that same connection—I would like to comment on some of the questions that were addressed to the map which is P-A-5, showing the Braniff territory, and there was some suggestion made that that had been overstated.

In that connection, I would like to call the Examiner's attention—

Mr. Hamilton: I wonder if we could have that marked for identification?

The Witness: I have before me Braniff Exhibits in Dockets 525 and I am referring specifically to Exhibit No. B-3.

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[fol. 4213] Mr. Hamilton: Mr. Examiner, is there any objection to the stipulation of that exhibit into the record?

Mr. Schneider: I will surprise you and say "no".

Mr. Gambrell: I am not familiar with it. Would it be possible for me to see it?

Mr. Hamilton: Mr. Examiner, then I take it it is agreeable?

Examiner Wrenn: I don't hear an objection.

Mr. Gambrell: I don't see the weight of it, but I don't see any reason to object.

Examiner Wrenn: Did you want to stipulate it into the record?

Mr. Hamilton: Yes, if there is no objection.

Mr. Gambrell: Without admitting the weight of it at all.

Examiner Wren: All right. It may be incorporated by reference, then.

The Witness: I would comment briefly on it. Braniff there showed two types of generating areas, one which they call primary and the other secondary.

The primary area which they showed for themselves included all of the states except the territory west of the Mississippi and of that territory it included Minnesota, Iowa, and the northwestern half of Missouri.

For the second area, half of the generating area it included Wisconsin, Michigan, Illinois, the balance of Missouri, and Arkansas.

It did not include Tennessee although at that time Braniff

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[fol. 4214] was not yet certificated to Tennessee.

Now, so much for the area which Braniff reaches directly. Then we have superimposed upon that, Braniff's ability to reach the eastern area through its connection with National. While, of course we fully accept Mr. Schneider's statement that no discussions looking toward an interchange agreement have yet been made, I think it is only realistic for us and for the Board to assume that these two parties who were put together by the Board—put together at Havana, I mean—will make the most effective arrangements possible. That means that Braniff with an interchange with National would have through plane service to very large areas of the United States as indicated in this map—or could have.

Then there is another factor which has been mentioned, but I think not sufficiently emphasized, and that is the Chicago and Southern connection at Havana, which is important because it gives Braniff a shorter route than its own to Chicago and access to the very important centers of Detroit and St. Louis.

Now, when you add upon all that the fact that Braniff and National and Chicago and Southern would have the advantage of getting to the traffic at the source—that is, the United States-originated portion of the traffic at the source—whereas Pan American and Paragraf, at least at

present, are dependent on connecting carriers, most of whom are active competitors, at least in other fields.

I think that is the story on the American-flag end.

Mr. Hamilton: Mr. Examiner, I wonder if it would be appropriate for us to adjourn at this time?

Examiner Wrenn: All right. Mr. Highsaw, did you have

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[fol. 4215] a statement you wanted on the record?

Mr. Highsaw: Mr. Examiner, I would like to make one statement with respect to the stipulation between the Grace and Pan American Corp. that was filed the other day, with respect to their becoming parties.

I don't believe that ordinarily Public Counsel would need to say anything about that stipulation, but because of the fact that we had considerable discussion, and my discussion of it might be taken as a statement that that might be a way to solve the problem, I would like to say that I have been examining the stipulation and there have been some doubts created in my mind as to whether or not that does solve the problem, and it may well be that the parties should follow a procedure of filing the agreements involved subject to receiving their right to contest the jurisdiction of the Board rather than the procedure outlined in that stipulation.

There is a very serious question in my mind as to whether or not the parties can put an agreement before the Board without actually filing it as they have tried to do in this stipulation, and then having the filing relate back ab initio.

I am not taking any position on that at this moment, but examination of the stipulation has brought that to my mind and I would like for counsel for Pan American and Panagra to consider that because I think it was primarily their problem.

I just didn't want to feel bound by it in case that question arose.

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[fol. 4216] Examiner Wrenn: We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 4:55 o'clock p. m., hearing in above-entitled matter adjourned, to reconvene tomorrow morning, October 10, 1946, at 10 o'clock.)

[fol. 4217]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 2423

In the Matter of:

PAN AMERICAN-PANAGRA AGREEMENT

Room A, Departmental Auditorium  
Washington, D.C.

Thursday, October 10, 1946

The above-entitled matter came on for hearing at 10 o'clock a.m., pursuant to adjournment.

BEFORE:

THOMAS L. WRENN, and  
WARREN E. BAKER,

Examiners.

APPEARANCES:

As heretofore noted.

[fol. 4218]

## PROCEEDINGS

Examiner Wrenn: Will you please come to order?

HENRY J. FRIENDLY, resumed the stand, was examined and testified as follows:

Direct examination (Continued).

By Mr. Hamilton:

Q. Mr. Friendly, when the hearing adjourned yesterday, you just finished describing the American flag carrier com-

petition confronting Pan American and Panagra on their service from Miami by the Canal Zone to points on Panagra's route on the West Coast of South America.

I would like to ask you now to describe the foreign flag competition confronting these carriers in this area?

A. I will try to be brief about it because a good deal of the ground has been covered. I think perhaps the most important of the foreign competitor's is BOAC, which has a

route from New York through Havana and various points in the Caribbean to every important point in South America as far as Santiago served by Panagra, was given by the Bermuda agreement, and which, under other agreements that it has with South American countries goes on from Santiago to Buenos Aires and from there to Rio and Europe.

We expect that BOAC on any route that it operates is going to be a very important competitor. The importance of it from the standpoint of this proceeding is that BOAC's service from New York to places on Panagra's route in South America will be a through one plane service whereas without this agreement Panagra and Pan American will

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[fol. 4219] have a three plane connecting carrier service.

It may be of some interest also to point out the importance of the BOAC route not only from the standpoint of United States-Latin America travel but also from the standpoint of travel between Europe and the West Coast of South America via the United States.

BOAC is in a position to give a one-carrier service to that traffic whereas under the present set up the United States would try to compete with a four carrier combination.

Then starting at the other end, we have the Argentine company, FAMA, which will undoubtedly have a route up the West Coast to the Continental United States.

As to what points may not be certain but New York definitely, and perhaps probably others.

FAMA will have the same advantage in the way of access to traffic in the Argentine, traffic originated in the

Argentine, as I have already mentioned in the case of the domestic airlines for traffic in the United States.

I won't repeat that story for the Chilean Company and the Peruvian Company. The situation I should say would be the same as FAMAS, with respect to their particular countries.

I think it is worth making one point, however, about the two Colombian Companies—TACA and Ayaanca, because there was some suggestion that they were not effective competitors by virtue of the fact that they, at least, their present authorizations, do not cover service between the United States and the Canal Zone.

The fact is nevertheless that their routes reach Ecuador

{fol. 4220} and Peru, and that the mileage via Bogota is very slightly, if any, greater than via the Canal Zone.

There is no peculiar virtue about going through the Canal Zone as a means of getting to the West Coast of South America. It seems to me that, summing up the picture of domestic and foreign competition, it is pretty clear that without this agreement, Pan American and Panagra are in a perfectly hopeless position to compete for the West Coast traffic.

Q. In your description of competition—the competition that Panagra and Pan American are facing upon this route, you mean that they are facing more competition from other American flag carriers and from foreign flag carriers in terms of number of carriers, or are you also taking into account the traffic potential?

A. I have been talking thus far about the number of carriers that they are subject to, but, of course, it is true that that is only part of the problem, and that the rest of the problem is the thinness of the traffic which has to be considered in connection with the number of these carriers.

I think those figures ought to be borne in mind, because we sometimes forget them. I think the Crozier Report shows that the 1938 sea traffic of all classes, including the third class and the 1941 air traffic to all the countries on Panagra's route—I should say between the United States and all countries on Panagra's route—and including the whole of the Argentine traffic, amounted to about 18-1/2

passengers in each direction per day; which is about half

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[fol. 4221] what would be hauled in one Pullman car that is going between New York and Miami, and just to give some idea what a different order of magnitude that is, the flow of traffic by surface and air on the route to Miami, simply from points north of Washington on the East Coast —and I am talking now about only traffic to Miami and not about traffic to points between Washington and Miami or between other points on the route, was 223,000 a year or 305 passengers in each direction per day, and, of course, there, I am using the figures of the 1933 rail and bus traffic

was

traffic which ~~were~~ the lowest point of the depression.

It seems to me that those historic figures show that the air traffic that we are talking about to the West Coast of South America, isn't something that now exists or has existed in any volume. It is something that has got to be developed and that in order to develop it successfully, Pan American and Panagra ought not to be handicapped by this purely artificial barrier of a necessity of changing planes at Balboa if the public interest is to be served as it ought to be.

Q. Mr. Friendly, I would like to ask you now why Pan American was willing to enter into this agreement with Panagra, although it had long opposed Panagra's application for a certificate into the United States?

A. Well, I think I can sum it up by saying that the agreement preserves precisely those relationships which the granting of a certificate to Panagra would have destroyed.

Q. Do you want to elaborate on that?

A. Yes, I can. I would like to emphasize, in the first

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[fol. 4222] place that Pan American's position with respect to Panagra's applying for a certificate to the United States, was something that was altogether separate and distinct from the general question of competition in international air transportation, or from the question of competition in American flag competition, I mean—

Of course, there was never any question about foreign flag competition, or even from the question of American

flag competition to Latin America or even South America. That latter question was a broad question of air transport economics and of governmental policy.

The question with respect to Panagra's applying involved on the contrary, very specific considerations applicable to the particular facts of this case.

Now, the first of those considerations was the effect which the granting to Panagra of a Balboa-Miami certificate would have had on Pan American.

It would have completely deprived Pan American of an outlet to the West Coast of South America. To have such an outlet was the very purpose for which Pan American, back in 1928, had joined with Grace in creating Panagra.

The figures in this record show that 40 per cent of the traffic which Pan American moved in the last 18 months between Miami and Balboa was traffic destined to points on Panagra's route and we believe that percentage will probably be higher in the future rather than lower. That

a

is the reason affecting Pan American.

The other reason is a reason affecting Panagra, and Pan American's investment in Panagra. We felt that the grant-

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[fol. 4223] ing of such a certificate to Panagra would simply have transformed the relationship between the two companies, which had existed since the beginning, and that in the course of doing that would have wrought a very serious injury on Panagra, in addition to the injury I have described as to Pan American.

Q. Mr. Friendly, what has that relationship between Pan American and Panagra that you mentioned, been?

A. From the beginning, Panagra has had a very close relationship with Pan American, and it is a relationship which we think has been exceedingly beneficial to Panagra.

Just to give a few instances of it, one of them has already been mentioned, that from the beginning Pan American has acted as Panagra's sales agent in the United States, and has given Panagra a coverage which Panagra could not possibly have obtained on its own.

Along with that general sales agency have gone a great variety of other traffic services.

On the whole question of traffic procedures, experience in handling various types of traffic matters, handling of claims, and so on, filing of tariffs, the use of Pan American's departments that are organized for that purpose, the immediate benefits of any arrangements that Pan American has made for the handling of traffic.

I might mention as one instance the agreement with Railway Express Agency. Of course all these things now seem very easy and matter of fact, and all that anyone has to do now is go out and copy them, but I know of my own knowledge that that agreement was the result of at least a

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[fol. 4224] year's negotiations on the part of Pan American and when made, of course, Panagra immediately came in on them and got the resulting benefits.

Turning to another quite different field: that of engineering and technical services: I don't pretend any expert knowledge on that subject, but I think it is general reputation in the industry that Mr. Priester and his department have pioneered a great many techniques, again many of which are now standard, and that Pan American maintains an excellent engineering organization which is certainly far beyond anything that Panagra could have afforded or for that matter could now afford.

Then, there is the question of procurement of equipment. We like to think, and I believe the record bears this out, that Pan American has the most progressive record on equipment of any company in the business, and whatever Pan American has done in that field is immediately available to Panagra, and not when the contract has become public knowledge but from the very time when negotiations take form, when Panagra has an opportunity to come in or not to come in as its own interests dictate.

Q. How would the extension of Panagra affect this relationship that you have just described?

A. Well, it would have affected it simply by destroying it. It would have put Panagra into direct parallel competition with Pan American between Balboa and the United States. The very figures that I have given, or that are in this record, show that Panagra in its own interests, would have had to go after the local Miami-Balboa traffic—that is

[fol. 4225] local United States-Balboa traffic—gone after it vigorously, and we would have defended it vigorously."

Also, I don't suppose it is to be thought that Pan American would simply have smiled and handed over the haul to Balboa on the through traffic to Panagra. That doesn't seem to me to be competition, and we would have had to do what we could to keep some of that by making alliances with foreign carriers who were operating south of Balboa, or any way we could.

In other words, if the Civil Aeronautics Board had decided that Panagra was to compete with Pan American we would have assumed that they meant it and we would have competed—felt that we had to.

Q. What did Pan American consider that the effect of this change in relationship would be upon Panagra?

A. Well, we believed that that change would have been exceedingly destructive of Panagra and of our investment in it. We always thought so and we think so now more than ever.

Panagra is up against very big league competition as what I have said already shows. Pan American simply didn't believe that Panagra is in any position to take on that competition, and in addition the competition of Pan American with any great prospect of success.

I don't want anything that I say in this connection to be deemed belittling of Panagra because we are very proud of Panagra and we think it has done a fine job, but one has to face the fact that Panagra does have a long thin line, and that while it has a very long route mileage it does not

[fol. 4226] have a volume of business and it does not seem likely that it will have a volume of business which in any way corresponds to that. Its passenger revenues in 1945, which I think was the biggest year in its history, were somewhat less than Braniff's, and with Braniff now extended so as to duplicate everything Panagra has, and with an extension into Mexico in addition, even if Panagra were to be extended to United States it would still be a good deal smaller than Braniff, not to speak of BOAC and Pan Amer-

ican, and we think that it would have very great difficulty in meeting that competition.

I think one has to recognize that the situation of Panagra in that respect would be quite unlike the situation of some of the smaller domestic lines which have given a very good account of themselves.

For example, there is Mid-Continent, which was described in the recent opinion. Those lines draw traffic largely from the very territory in which they operate, they have no great problem of obtaining sales coverage. They, on the whole, are not exposed to great competition from bigger lines than themselves, at least on many of their hauls.

Panagra would have had to draw its traffic from the whole United States, and to do that against the competition of these foreign flag monopolies and of Braniff and of Pan-American, and we don't see any future for Panagra in that, and never have.

Q. Mr. Friendly, what will Pan American's policy be with reference to the operation of local Miami-Canal Zone service upon the approval of the contract?

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[fol. 4227] A. Well, it is impossible now, Mr. Hamilton, to lay down what our policy will be if by that you mean the precise number of schedules. We have given some illustrations here which other witnesses will cover.

Perhaps I might—I think about all one can do is to take a look at the figures and see what they indicate as to what a possible pattern might be and I hope that in doing that I won't be taken to have made any commitment that it will be done precisely this way.

I can't do that for the reason, among others, that one doesn't know how far the proportions shown in these figures will be characteristic of the future, what with changes in the traffic movement, competition, and so on.

However, if it would be helpful, I could give a little indication. The figures in Exhibit 8, particularly those at the bottom of the page, show how the Panagra traffic to or from the United States, breaks at Balboa among the three gateways.

As I said yesterday, about 60 per cent goes to the Miami gateway and 40 the others. I think it was 58 and 42 per cent, but take it as 60-40, that would mean that about 40 percent of the space on these through flights, north of Balboa would be available for the carriage of local Canal Zone-United States passengers.

When you look at the figures as to total carryings between Miami and Balboa, which is shown on the top line of that exhibit, and deduct the proportion of that which is through traffic for Panagra and the proportion which might be carried on these through flights, it would look as if one would

[fol. 4228] have to operate—as if there would be, rather, traffic enough to support about one local schedule for every two through schedules.

As I say, that is simply an indication from these figures and one will have to work the thing out as we go along. It is definitely our intention to provide such number of local schedules as is necessary for the proper accommodation of local traffic.

Q. In examination of previous witnesses, the question has been raised as to what the effect of approval by the Board of the financial provisions of this contract might be upon subsequent mail pay cases. I will ask you to express your views on that question.

A. Well, my thought in the preparation of the contract and its submission to the Board is this: of course I don't know that my views count very much, it is going to be the Board's views that govern, but I think the theory of our presentation was this, that there are certain provisions of the contract where the whole question of financial arrangements is left for subsequent determination even by the parties.

I might cite paragraph 8 of Exhibit A which relates to training. The basis of that isn't even stated in the contract. It is perfectly obvious that in a case of that sort, approval of the contract wouldn't indicate approval of any arrangement since there is no arrangement stated.

There are other provisions of the contract such as the general basis for the charter hire which are laid out in some

detail. We would suppose that if the Board approved the contract containing such provisions it would not at least

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[fol. 4229] in the first instance, raise any question in a mail pay case as to the general line which had been stated, although of course it would be entirely free to question whether the principle had been properly ~~applied~~ in the actual charges that had been made.

Of course it has been repeatedly brought out that if at any time the Board felt that the contract was operating improperly in that respect or in any other, it has means at its disposal for dealing with the situation.

Q. I will ask you to direct your attention to a question that Mr. Schneider asked Mr. Roig as to the meaning of Paragraph 10(b) of the contract, and ask you to comment on that.

A. I will confess that Mr. Schneider's question took me by some surprise. It had never occurred to me that Pan American was not under an obligation to establish adequate disciplinary machinery although I can see that the language leaves something to be desired. If there is any doubt on that, I would be very glad to state that we consider ourselves bound to establish such machinery and have that stand as a binding construction of the contract.

Q. Mr. Friendly, reference has been made to agreement whereby Pan American renders services and facilities to Eastern Air Lines on its Miami-Puerto Rico route. Is it true that that arrangement relates only to communications?

A. No, that is not true.

Mr. Hamilton: Mr. Examiner, I have here copies of that agreement which I would like to have marked for identification at this time.

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[fol. 4230] Examiner Wrenn: That will be marked for identification as PAA-Panagra Exhibit No. 32.

(PAA-Panagra Exhibit No. 32 was marked for identification.)

'By Mr. Hamilton:

Q. Directing your attention to this agreement, was this agreement—

A. Do you want me to identify it first?

Q. Yes I expect that would be a good idea. Will you identify this PAA Exhibit 32?

A. I had something to do with the making of it and it has been furnished by our New York office as a correct copy of the agreement.

Q. Was this agreement an isolated act or an unusual occurrence?

A. It certainly was not an isolated act. It was the first of what we expect will be quite a series of acts. It is a part of Pan American's announced policy of its willingness to make its operating facilities and personnel available to other carriers that have been certificated by the Civil Aeronautics Board insofar as feasible. When I say the first of a series of acts, I think I ought to correct that. It is the first perhaps as far as American flag carriers in this particular area are concerned, but of course we have been doing this kind of thing for foreign flag carriers for a long time. We have had arrangements for sharing our facilities with BOAC, oh, I guess going back to 1937 when the Bermuda

first service was operated, and had arrangements with KLM in the Caribbean for many years, and so on.

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[fol. 4231] Q. I would like to now direct your attention to a question which Mr. Hickey directed to Mr. Roig as to the character and extent of the competition facing Pan American on its route to Miami down the East Coast of South America, and ask you to comment on that question.

A. Well, I simply want to have the record perfectly clear that the list of competing carriers that have been given, was as I believe Mr. Roig made clear, only the carriers that have an effect on the combined services of Pan American and Panagra.

If you are talking about Pan American "monopoly", you have to introduce a great many other factors. There is no use in my describing the routes of the other American flag lines which, in addition to Braniff, and include American and Eastern and National and Chicago and Southern and

Western, because those are all in the record. I am not going to take the time to describe all of the foreign flag services but I think perhaps the record ought to have some indication of a few of them in view of this persistent use of the word "monopoly," so I will try to be reasonably brief about it, although necessarily incomplete.

In the first place, KLM, which has been operating in the Caribbean for years, an airline of the very highest excellence, and so known throughout the world, which has been given a permit to operate into Miami, and is now operating from Miami through various points in the Caribbean to its headquarters in the Netherlands West Indies, whence its lines extend on down to Rio and Buenos Aires.

Then the British--we have discussed the British line  
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[fol. 4232] down the West Coast but the Bermuda agreement also authorizes British operations between various islands of the West Indies into Miami.

The French have a service in the West Indies also, although it has not at present reached the Continental United States.

Then, turning to the Latin American countries and starting at the bottom, from a geographical latitude standpoint only, FAMA has plans for lines up the East Coast as well as up the West.

The recent agreement concluded with Brazil provides for Brazilian lines to operate to New York and Miami and to New Orleans, and we know that the Brazilians have excellent airlines which are set up and ready to go.

A permit has been issued to the National Airline of Venezuela, LAV, to operate both to Miami and through New York to Montréal.

In Cuba we have Espresso as well as our own Cuban Company which we are proposing to sell to Espresso.

Mexico, there are great numbers of companies.

Superimposed upon all that are the various TACA companies. TACA + Colombia already has a permit to operate to the United States. Other TACA companies have applications pending, and they afford, taken together, a complete network of operations ranging from Mexico City

where they have some kind of arrangement with American companies reaching that point, from Mexico City on the North as far as at least Rio, and I think Buenos Aires, on the South; almost a complete duplication of the routes that Pan American has.

[fol. 4233] Above all that are many non-scheduled operators, some of them—one of them at least—strike out alone using equipment which bears the name of a very large domestic airline.

All that discussion has dealt only with foreign lines which are either operating or are about to operate, between the United States and countries of Latin America. It has not dealt with the legion of other operators that are operating between countries in South America such as the British and French lines that operate down the coast of Brazil and compete directly with Pan American between Rio and Buenos Aires, as Mr. Roig has testified they compete with Panagra between Buenos Aires and Santiago. It does not relate to the other Brazilian companies that are operating between Brazil and the Argentine. It does not attempt to cover the two other Venezuelan airlines which are operating international services.

It does not attempt to cover airlines such as Aerovias Braniff which is operating or proposing to operate various international lines in addition to its proposed operation across the border.

Well, I think that gives some idea, although as I say it is incomplete.

Q. Mr. Friendly, I would now like to address your attention to a question that Mr. Highsaw, yesterday asked Mr. Roig, with reference to a quotation from the decision of the Civil Aeronautics Board in Docket 779.

Mr. Hamilton: I am referring now, Mr. Examiner, to page 441 of the transcript.

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[fol. 4234] By Mr. Hamilton:

Q. The excerpt from the decision quoted by Mr. Highsaw appears there and I shall read it, if that is agreeable.

Examiner Wrenn: Go ahead.

[fol. 4235] By Mr. Hamilton:

Q. I am quoting from the quotation: "Deadlock between the two interests equally represented in the ownership of the company is always possible and certain to occur from time to time, especially in view of the other activities between the two owners."

I will ask you if you care to comment upon that question.

A. I don't think one could quarrel with the statement that deadlock between the two interests equally represented in the ownership of the company is always possible.

It probably depends on the tone of voice in which you read it and where you put the emphasis. I would put it on "possible". Of course it is possible in the case of Panagra and possible in the case of any company where the ownership is equally divided, which I may say is not an unusual thing in American business life to have such a company.

However, I certainly do not accept the statement that it is certain to occur.

Mr. Roig said yesterday, the agreements settled the only matters where there has been a deadlock of any standing, and they provide their methods for settling others, and it certainly seems to me to be worthwhile pointing out also that an extension of Panagra wouldn't have avoided those possibilities of deadlock; in fact, to my mind it would have increased the friction between the two owners to a point where the deadlocks might have occurred more rather than less.

[fol. 4236] Coming back to this "certain to occur" and to the reference to the special interests and other activities of the two co-owners, I would like to take advantage, if I might, of an opportunity to say a word about what seems to me to have been a feeling that has crept into some of the questions, that Pan American has some interest against Panagra, and I want to deny that just as emphatically as I can.

Pan American is just exactly as interested in the welfare of Panagra as anybody could be. Pan American had

a large share in their having been a Panagra. There was a lot of debate in Docket 779 as to whether or not the larger share, as we think we did, but we are not going to debate that now, because it is not important here, but Pan American has been very proud of what it did in bringing about what

Panagra, and of course Panagra has accomplished, and it wants to see Panagra continue on a very high plane.

Now, lest I be thought to be preaching a sermon here, I wish to state that that interest is not of a purely sentimental character, although that does exist, and any suggestion that Pan American's financial interests are opposed to those of Panagra, seems to me to be completely belied by the least analysis of the figures, and I would like to talk a little about the figures in Exhibit 7 which show the content of Panagra's passenger revenue, and I think when you analyze those, you see just how little basis there is for any theory that Pan American's interest could be anything other than one of the most intense support.

In the first place, my remarks are all going to deal with the right-hand column, which deals with passenger rev-

[fol. 4237] enue, not the number of passengers.

49 per cent of Panagra's revenues, that is, the difference between the 100 and 51, is from what might be called inter-port traffic. That is traffic between points on Panagra's route from Balboa south.

That traffic is obviously completely unavailable to any route which Pan American has. Pan American has just as much interest as our partner in the development of that traffic.

We get just as much out of it. We haven't the slightest adverse interest as to that.

Now, let's look at the other 51 per cent, and you go right down the analysis of that until you come to the last figure of 14.7 per cent, which is the traffic between the United States and Buenos Aires.

I suggest we call it 15 to make it a little easier to talk.

In other words, of the 51 per cent of Panagra's traffic which is traffic between the United States and points on its route, 36 per cent is to points which Pan American

does not serve and couldn't possibly get to any route of its own.

Now, I say that as to that 36 per cent, Pan American's interest in building up Panagra is not only as great as that of our associate, but if you want to talk about it, it is even greater, because in addition to getting just as much financial benefit out of what Panagra does with it, we have a very good chance at least of getting the haul between the United States and the Canal, which inures completely to our benefit.

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[fol. 4238] Now, let's look at this 15 per cent. That is traffic between the United States and Buenos Aires; it is not traffic between Miami and Buenos Aires.

As I have said before, 40 per cent of that roughly comes from the western gateways and presumably the man who goes through the Brownsville gateway, or who comes from Los Angeles, is not going to take the East Coast route to Buenos Aires anyway, because it is too roundabout, so you have to deduct 40 per cent of the 15 per cent, and that brings you down to 9 per cent of Panagra's revenues, which might be thought to be subject to possible diversion to the East Coast route.

Let's look at that 9 per cent now. Passengers are not just cattle. They have their own ideas as to how they want to go. Many of them do, at least. Many people—certainly many tourists, and also many businessmen—who go to Buenos Aires want to go down one way and come back the other.

Other people have special reasons for going down the west coast because they want to stop at Lima or Santiago or some other point. I have no statistical measure of how many of those there are, but it would seem reasonable to assume that, say, half of the passengers have some reason for taking a particular route, and couldn't be diverted no matter what was desired.

So it seems to me you are down to about 4½ per cent of Panagra's revenues which Pan American might be able to change over to its East Coast right to Buenos Aires if

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[fol. 4239] it wanted to and the suggestion is that in order

to prevent W. R. Grace and Company from getting the share of the profit to which it is entitled, from that 1½ per cent of Panagra's business, Pan American is going to prejudice its ability to derive the profit from 98½ per cent of the business.

An awful lot of things have been said about Pan American in the past, but I don't think we have generally been accused of being tools, and it seems to me that nobody who wasn't a complete fool, could do anything as silly as that, and the difference of opinion between us and our partner in Panagra, has not been at all over the question of whether Panagra ought to be developed, but how it should be developed, and now happily we have found a solution of that problem which is acceptable to both of us, and as we think at least, highly beneficial to the public, and we hope that we can be allowed to carry it out.

Mr. Hamilton: I think that is all, Mr. Examiner.

By Mr. Gesell:

Q. I wasn't quite clear, Mr. Friendly, as to whether or not you were saying that in the event Panagra were to come to the United States on its own route, Pan American would continue or discontinue its activities on Panagra's half.

before in the nature of its sales agency and engineering services and other assistance, in view of the competition which would be created?

A. Well, I can only say, Mr. Gesell, what I would recommend, and what would seem to me to be likely.

As to any sales activities or assistance of that sort, I would recommend in the strongest possible terms that the

[fol. 4240] be discontinued. I don't see how we could be in paralleling competition with Panagra between the United States and Balboa and be acting as its sales agent. I would also recommend that we discontinue any other service which involved the slightest shifting of confidential information, or anything of the sort. I think the only things that we might continue would be the type of things that we have done and are doing with our competitors

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such as this agreement that has been marked with the PA Exhibit 32, for sharing certain operating facilities with Eastern.

I don't mean to say that we would have any special animus against Panagra, certainly, that we would not have against anyone else, but I don't think that we could or, in the interests of proper competition, should do anything more.

Q. The question has been raised in this proceeding as to whether or not it would be possible for Panagra to work out with Pan American procedures for handling Panagra's maintenance in the United States at PAA's bases and having cooperative activity under the heading of training, with or without this through flight provision for Panagra planes coming to a United States point over PAA's

routes, and I want to ask you what has been the policy of Pan American with respect to performing maintenance and training services for other carriers.

A. Our policy has been to do it or not to do it, as our own operating requirements dictated. We have at times done certain maintenance for companies in which we have an interest. For that matter, we have at times done some

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[fol. 4241] for companies in which we have no interest.

We would simply, in the absence of an agreement of this sort, deal with that matter from time to time, and look at each problem as it arose. We would not undertake any long-term commitment.

Q. Are you saying that you would not undertake a commitment which involved a regular and continuing obligation to perform maintenance and training to the extent that this agreement contemplates? That is the case?

A. That is definitely the case, and perhaps I ought to elaborate on the reason, because it surely wouldn't seem to be sheer obstinacy on our part. We have found, taking the maintenance problem, for example, that you go up in kind of steps, that you increase your maintenance facilities and at times you can take on other work and do it to your own advantage, then as your operations expand that condition eases and it becomes a burden.

In the absence of some general agreement of this sort, we would not take on a commitment which might be inconvenient at various times.

Q. Now, on a somewhat different subject—

A. There is one other thing I would like to say also; that of course I have dealt with this only from the standpoint of Pan American. There is another question that shouldn't be confused with this, and that is how far the through operation of these planes into the United States is necessary from Panagra's standpoint to make these maintenance and training provisions as beneficial as they now are.

I assume other witnesses will deal with that.

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[fol. 424] Q. Another question somewhat unrelated, which I think can be asked in this matter, to cover inferences at least raised by questions of other counsel in this case. Is it the intention or purpose of Pan American to throw obstacles in the way of carrying out of this agreement by unreasonably restricting Panagra's right to establish rates and schedules or routes, or acquiring equipment or developing airways or constructing landing fields, and other matters of that sort which might come before the Board of Directors from time to time in the management of the company, and involve questions of business policy?

A. That certainly is not the intention, and I thought that my somewhat extended answer to Mr. Hamilton's last question indicates the reason, or at least one reason, in addition to good faith in carrying out this agreement, which leads to that; that it would be the height of stupidity for Pan American, in its own self-interest, to follow any such policy as that.

Q. And what have you to say about this question which is raised by the fact that Pan American has—in 779 at least—in the past charged Grace or Grace Line with suppressing Panagra in the interests of the steamship business or some other interest? Do you consider that that situation is in any way affected or changed by this agreement or other developments?

A. Well, I would say at the start that we are not concerned about that situation in the slightest degree. I don't know how far you want me to elaborate on it.

Q. Well, you certainly have been concerned about it in

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[fol. 4243] the past, have you not?

A. Yes. I am familiar with the charges that you refer to. Perhaps I should expand on my answer. I would like to preface that by the general statement that what I am about to say does not relate to steamship companies in air transportation in general. It relates to W. R. Grace and Company and Pan American-Grace Airways in the particular circumstances that we have in this case.

We made those charges in Docket 779, and we sincerely believed them. They related even when they were made—the evidence in support of them, I should say—went back to a period some years past, a period antedating Mr. Roig's election to the presidency of Panagra. We have lived with Mr. Roig and W. R. Grace and Company for a great many years.

We have lived with them very closely since then, and we do not have any fear of any such suppression on their parts, of this airline, as we did at the time when we made those statements.

I think also—let me break in there too. I don't want to put this on too personal a note, because we are making an agreement for a long time, and someone might say "No matter how confident you are in Mr. Roig, you shouldn't let that influence you."

We know other people in W. R. Grace and Company, and as was said, that is not a one-man show. I think that anyone who has had contact with Grace can't but be impressed with the stress that that company puts on the development of younger men who know what the policies are, and who are

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[fol. 4244] developed so that they are ready to step in when occasion arises, and I am confident that Mr. Roig, and the others—Mr. Garni and so on—have impressed their personalities and their enthusiasm for air transportation upon those other men.

Turning to another phase, however, there are protections in this arrangement which certainly would not exist if you had a case of a steamship company owning an airline.

The solicitation of the business in the United States under these agreements is to be very largely in Pan Ameri-

can's hands. Arrangements have been made whereby the traffic end in South America is largely handled by Panagra's own employees.

I don't know the details of that as well as Mr. Detroot, but I know the general effect, so that we are not placing the traffic solicitation for this airline in the hands of the steamship interests.

That about covers it.

By Mr. Gesell:

Q. There are a couple of questions that relate to some-what legal problems that came up during Mr. Röig's examination which were deferred for you, and perhaps they ought to be covered.

One had to do with what is contemplated by the parties to this agreement with respect to the clause concerning the pending litigation. Could you state for us what the present status of that litigation is, and what is contemplated by that provision of the agreement?

A. Petitions for certiorari in Docket 779—or rather the

[fol. 4245] review of the decision of the court of appeals for the 2nd Circuit in Docket 779 were granted by the Supreme Court and are on the Supreme Court docket.

Shortly after the execution of this agreement, I took the matter up with the clerk of the Supreme Court and informed him what had occurred, addressed a letter in co-operation with counsel for W. R. Grace and Company to the clerk requesting that in the light of the making of the agreements and the pendency of this proceeding, we should

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not be put to the expense of printing a record which we would otherwise have had to do before now.

The clerk said that he considered that request reasonable and wrote a letter indicating that while this proceeding was pending, we would not be required to print the record, and the case would not be docketed for argument.

Mr. Gesell: That is all, Mr. Examiner.

Examiner Wrenn: Mr. Schneider, you may examine the witness.

## Cross examination.

By Mr. Schneider:

Q. May I say first, Mr. Friendly, I trust we may never find ourselves in the reverse situation? I am a little confused by the answer you gave to Mr. Gesell in connection with the steamship business of W. R. Grace.

In Docket 779, Pan American took a very firm position with respect to the steamship tie-up of W. R. Grace, did it not?

A. Yes. The record speaks for itself. It is in here.

Q. That is right. And I take it now that the position

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[fol. 4246] of Pan American is somewhat changed from what it was in 779; is that correct?

A. I stated what our position is now.

Q. Do you consider it to be different than what it was in 779?

A. Yes, to the extent that comparison will reveal.

Q. You are not as vigorously opposed today to the tie-up between W. R. Grace and Grace Lines as you were then?

A. We are not opposed to W. R. Grace and companies owning the stock that they own in Panagra and having the rights that they have under these agreements.

Q. Are you still opposed to W. R. Grace having a tie-up with the steamship business?

A. We have nothing to say about that.

Q. Well, I ask for an answer to my question. Is Pan American still opposed or isn't it?

A. I can't contribute anything on that beyond what I have, Mr. Schneider. I have said that we are not concerned about this situation in this particular case under the circumstances that I have mentioned.

Q. Mr. Friendly, leaving aside this case, does Pan American still hold the position it held in Docket 779 with respect to steamship company affiliation of W. R. Grace?

Mr. Hamilton: Mr. Examiner, I object. I think the witness has answered that question.

Mr. Schneider: I submit he has not. He has said that he does not oppose the steamship affiliations in so far as they affect this contract.

Examiner Wrenn: On the basis of your question, what

[fol. 4247] is the materiality of it?

Mr. Schneider: The materiality is this: If Pan American Airways took a position in 779 against W. R. Grace steamship affiliations, I want to know if they still think that is bad, and if it is, then I can argue whether it affects this contract as well as he can argue that it does not affect this contract.

Examiner Wrenn: I understand, but I am going on the basis of your question as you have just stated it, Mr. Schneider. I don't see what bearing it has. As I understand you, you said leaving aside this contract in this case here. If we are getting into something abstract, I am going to have to sustain the objection on that basis.

Mr. Schneider: All right. Let me rephrase the question.

By Mr. Schneider:

Q. Leaving aside any consideration of this contract, Mr. Friendly, has Pan American Airways changed its mind on the steamship affiliation question as set forth in 779?

Mr. Hamilton: I submit, Mr. Examiner, that Mr. Friendly has already testified on that to the extent that it is relevant.

Mr. Schneider: Mr. Examiner, we have already had a ruling from you by stipulation to the effect that the material in 779 is relevant. That was the effect of the stipulation. It was received in evidence as being relevant over the exception of counsel for Grace and Pan American-Grace.

Now, if that has been received in evidence over their objection as relevant, I am entitled to know to what extent

[fol. 4248] they still take the position in that material?

Examiner Wrenn: As I understand your question and maybe I am wrong: you were excluding any consideration of this proceeding we have here before us now, and if that is the import of your question, I can't see the relevancy of it.

Mr. Schneider: Certainly, I can't take Docket 779 which is now in this record, and make an argument that Pan American felt so-and-so about a steamship affiliation of

W. R. Grace unless I know whether they still think that, I am trying to be fair to Pan American.

Examiner Wrenn: The part I am trying to find out is if we leave aside any consideration of this case that we have before us—

Mr. Schneider: I didn't say "leaving aside any consideration." I said "leaving aside any possible effect on the terms of this contract."

Mr. Hamilton: It comes to the same thing.

Mr. Schneider: Mr. Friendly said "I don't think that the steamship affiliation of W. R. Grace particularly hurts this contract; they had not any adverse effect upon this contract."

I am asking the broader question. Do they still think it is wrong for W. R. Grace to have steamship affiliations? They say they did here. I want to know whether I can still make the argument from 779 from what they have said there. If they have changed their mind, I can't make the argument. That is all I want to know. Have they changed their mind?

Examiner Wrenn: I will let him answer it.

A. All I can say is this: On the general question of steamship control; by that I mean a hundred per cent control

[fol. 4249] or something the equivalent of that; that gives the steamship company complete "say" about an airline, we were the first to oppose that, I believe, and we still oppose it.

As to the ownership of W. R. Grace and Company of the stock of Panagra under the arrangement contemplated by these agreements which are before the Board, we do not think that such stock ownership is adverse to the public interest; we do not make any complaint about it and we don't intend to.

By Mr. Schneider:

Q. I take it from your testimony, then, that if this agreement were not in existence, you would still adhere to the position you took in 779 in this question?

A. I will decide that when the question arises.

Q. You refuse to answer the question?

A. I have answered it.

Examiner Wrenn: He has answered it.

By Mr. Schneider:

Q. Mr. Friendly, in your negotiations with Mr. Gesell with respect to this contract, did he at any time attempt to obtain for Panagra the right to apply in its own name for a route to the United States?

A. That had been fully debated at the meeting of the Panagra board. It was perfectly evident that Pan American was not going to agree to that. The negotiation didn't include that as a possibility.

Q. Then, I take it, your answer is that Mr. Gesell did not raise the point in his negotiations with you?

A. We started on the basis that we were to find a way that would give Panagra the things that it thought it needed without involving such an extension.

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[fol. 4250] Q. Then as part of the bargaining and negotiating for this particular contract, he didn't attempt to acquire as one of the conditions of the contract a right to apply in its own name to the United States?

A. You mean right now?

Q. That is right.

A. No, he did not.

Q. Now, Mr. Friendly, do you understand, as a result of contracts A and B, that Panagra is prevented from applying for a route to the United States in its own name?

A. No.

Q. There is no informal understanding on that basis?

A. Well, my understanding is exactly as Mr. Roig has testified: that there is no express provision in the agreement on the subject; there is nothing whatever in the agreement that would prevent Panagra, upon proper action of the Board of Directors, from making an application. There is an understanding which you can say is implicit in the agreement, or which you can say is a result of the express provisions in regard to the dismissal of litigation, that Grace and Company will not agitate for such an extension.

Q. The reason I raised it; I wanted to see if your answer was the same as Mr. Roig's.

A. Precisely the same. If I haven't phrased it the same, I will adopt his, because it was undoubtedly better.

Q. One last question, merely to clarify the record. Mr. Friendly: In your reference to the extension of Braniff to South America, I believe you said that the president had directed that Braniff be extended. You are aware that

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[fol. 4251] the decision in the Latin American case shows that the President merely decided the need for a second carrier and that CAB made the choice of carriers?

A. I believe that is correct, Mr. Schneider. Thank you for correcting me.

Mr. Schneider: That is all.

Examiner Wrenn: Mr. Gambrell, do you have any examination of the witness?

Cross examination.

By Mr. Gambrell:

Q. Mr. Friendly, am I correct in understanding that you, as an officer and executive of Pan American Airways, Inc. and Pan American Corp., were the chief negotiator with W. R. Grace and Company and Panagra in the development of these two contracts?

A. Well, the facts were as already testified. I would say, Mr. Gambrell, that I had my other suit on during those negotiations and was acting as a lawyer rather than as a corporate officer.

Mr. Gesell and I met as counsel for the respective parties. We did a good deal of talking. We didn't have any idea that anything—strike that out.

We often made proposals that we made simply for the purpose of seeing what each other thought about them without having had prior clearance with anyone.

Our idea was to put our heads together and see if we could create something which our principals would accept. It was done in that spirit.

Q. You agreed with Mr. Roig, who stated that the chief executives of the companies on each side did not, in the [fol. 4252] first instance, create a framework or a basic outline of agreement and tell you lawyers to develop it, that you didn't have a basic outline or basic framework, and you were not told as lawyers merely to do the editing or creation of the literature for that agreement; is that right?

A. That is correct.

Q. But you went on and started from the ground up and developed something which was finally acceptable by the boards of the affected companies; is that right?

A. That is substantially right; the only qualification being that there had been a little ground laid at the board meeting of Panagra, but that was in very general terms indeed.

Q. Were there exchanges of memoranda and correspondence between the representatives of the four companies which ultimately signed these two contracts?

A. I can recall none. There were of course drafts of the agreement, but my recollection is that I at least wrote no memoranda to anyone.

Q. Were there any communications from one side to the other in writing or between the negotiators or officials, on one side and those on the other?

A. Not to the best of my recollection. You mean written communications now?

Q. Yes.

Mr. Schneider: May I interrupt just for a minute? As I understand when you were cross-examining Mr. Roig, there was an understanding that minutes of the board of directors meetings would be furnished.

Mr. Gosell: That is right.

[fol. 4253] Mr. Gambrell: And executive committee meetings.

Mr. Schneider: Are they available now?

Mr. Gosell: I have the Panagra minutes; I do not know about the others.

Mr. Schneider: Could we have those now, Mr. Examiner?

Mr. Gesell: I don't mind.

Mr. Schneider: When will the Pan American minutes be ready?

Mr. Hamilton: I don't know. I will let you know during the noon recess as soon as I hear from New York.

(Off the record)

Mr. Gambrell: May I ask whether the minutes referred to in respect to Pan American Corp. and Pan American Airways were already established and approved, Mr. Hamilton? Have they already been cleared?

I know sometimes minutes aren't completely written up at the time of meetings. Have the minutes that were referred to already been written and established records of the company?

Mr. Hamilton: I am afraid I can't answer that now, Mr. Gambrell, because I don't keep the minutes and I am not familiar with it. I will be glad to report to you on it as to what the status now of the minutes is.

Mr. Gambrell: When the report is made, it will indicate when the minutes were prepared?

Mr. Hamilton: Yes, I will be glad to make a report to you on that question that you raised whether they have been prepared or not.

Mr. Gambrell: And when?

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[fol 4254] Mr. Hamilton: Well, I suppose they will show when they become official documents.

Mr. Gambrell: May I inquire of Mr. Gesell as to when these minutes were established?

Mr. Gesell: I don't know, but it was long before your request, Mr. Gambrell. These minutes were all set long before you asked for them.

Examiner Wrenn: In view of this discussion about minutes and so on, I want to see what the state of the record is there.

(Question read)

By Mr. Gambrell:

Q. Mr. Friendly, would you be willing, as vice president and general counsel of Pan American Airways and as a representative of Pan American Corp. to also make available to parties in this hearing any and all memoranda or copies of memoranda prepared or interchanged between the people who were negotiating for these agreements?

A. I would not, unless I was ordered by the board and I would argue very strenuously before the Board that I should not be so ordered.

Q. Do you take it that the proper interpretation of these two contracts, and the objectives sought to be attained through them, would in some measure be reflected by the work notes and interchange of correspondence, and memoranda and conferences which contributed to the development of these contracts?

Mr. Hamilton: Mr. Examiner, I submit that Mr. Friendly has stated his position on that question, and that this is not

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[fol. 4255] a proper scope of cross examination.

Mr. Gambrell: I am developing the importance and relevance and I would appreciate it if he would answer it.

Mr. Hamilton: I object to it.

Examiner Wrenn: So far as I am aware of the testimony here, I haven't heard that there is any such.

Mr. Gesell: That is the point.

Mr. Gambrell: He said that he wouldn't be willing to let us see them.

Examiner Wrenn: Go back up the road a little further to your previous questions.

By Mr. Gambrell:

Q. Were there any memoranda, or was there any exchange of communications in writing between the representatives of these four companies?

A. I have testified, Mr. Gambrell, that to the best of my recollection, there was no exchange of communications between the representatives of the two companies in writing. There were of course earlier drafts of these agreements.

Q. And those drafts in part, - some of them at any rate - finally ended up in the documents, I assume; is that right?

A. You know what a draft is, Mr. Gambrell?

Q. I am asking the question. A draft might be anything.

Mr. Hamilton: I object to the question, Mr. Examiner.

By Mr. Gambrell:

Q. Did some of those drafts ultimately contribute to the contracts as adopted?

Mr. Hamilton: I object to the question, Mr. Examiner.

[fol. 4256] Examiner Wrenn: What particular bearing does it have?

Mr. Gambrell: It shows the relevancy of the draft, the materiality of it.

Mr. Hamilton: Mr. Examiner, I submit that the witness has already stated his views on that question.

By Mr. Gambrell:

Q. Do you have in your files or do you know whether there are in the files in either of the Pan American companies any copies of any such drafts?

A. Yes, I have copies.

Q. Would you be willing to supply them for the light that they might throw on the purposes, objectives and meaning of these two contracts?

A. I have answered that once.

Q. I didn't ask just that before. Will you answer it now?

A. The answer is the same.

Q. Will you state what the answer is?

Mr. Hamilton: Mr. Examiner, I submit the record shows what the answer is.

Examiner Wrenn: The record shows it. He says the answer is the same as he made to the previous question.

Mr. Gambrell: He could just say "yes" or "no".

Examiner Wrenn: I submit that he has answered the question.

Mr. Gambrell: I am not sure which he said. I have never said. I have never asked him for just that and I want the record to protect me on that question, sir.

Mr. Hamilton: Mr. Examiner, I submit that it is clear

(fol. 4257) on the record.

The Witness: I will save time.

Examiner Wren: Go ahead.

The Witness: I am not supplied from index or let by the Civil Aeronautics Board and I will oppose to the best of my ability the making of any such order.

By Mr. Gambrell:

Q. Do you consider that the conversations and discussions and proposals that enter into the making of these two contracts, would have a function in interpreting the meaning of those contracts, similar to the function of discussions before committees of Congress in interpreting laws of Congress?

Mr. Hamilton: Mr. Examiner, I feel that I must object to that question. It is irrelevant.

Mr. Gossett: The same question, Mr. Examiner, that came up with the prior witness on questions of whether this was more like a law than it was a contract, came up, and more like a contract than it was a regulation. I don't see that has anything to do with this case at all.

By Mr. Gambrell:

Q. Is it your position that such drafts would throw no light, Mr. Friendly, upon the meaning, purpose, or objectives of these contracts?

Mr. Hamilton: I object to that question, if the Examiner please. The witness has stated his position as clearly and categorically as a man could with respect to this whole matter.

Mr. Gambrell: No further questions.

(fol. 4258) Examiner Wren: I don't know whether he has covered that particular phase of it.

Mr. Gambrell: I would like a ruling on it. I have asked him a question.

Mr. Hamilton: Let's have the question read back.

Examiner Wrenn: I was trying to rule on it. Do you want the question read back?

Mr. Gambrell: Yes.

Examiner Wrenn: All right, read it back.

(Question read)

Mr. Hamilton: I have my objection on the record, Mr. Examiner.

Examiner Wrenn: I am going to overrule the objection, Mr. Hamilton.

A. I would say, Mr. Gambrell, if there is some ambiguity in the contract, which I have not heard of up to date, a draft might throw some light on it. As to the purposes and all of the other things that you mentioned, I consider them wholly irrelevant. I don't consider that things that Mr. Gesell and I put down on paper in an effort to reach an agreement would have the slightest bearing on the question of whether what we eventually reached is in the public interest or isn't in the public interest. If there is some provision in this agreement which is of concern to the public as distinguished from concern to the parties, which is ambiguous, I think that can be developed, but I have heard of none to date.

Mr. Gambrell: No other questions.

Mr. Gesell: Mr. Examiner, I now have the Panagra

[fol. 4259] minutes requested by Mr. Gambrell. I have two copies of them, which I can make available to the Examiner for such distribution as he thinks appropriate. They consist of 10 pages.

Possibly one means of handling it would be to have the 10 pages copied into the transcript.

Mr. Gambrell: We first want to see them. We ask that we be permitted to see them.

Mr. Gesell: Certainly you can see them.

Examiner Wrenn: We will take a five-minute recess and you can look at them at that time.

(Short recess)

Examiner Wrenn: Let's come to order, gentlemen.

Mr. Gambrell: Mr. Examiner, that completes our cross-examination. We are going to study these minutes during the day.

Examiner Wrenn: I would like the record also to show that pursuant to a request, counsel for Eastern Airlines made on yesterday and agreed to by counsel for Panagra, the copies of the minutes have been furnished by Panagra, and pursuant to counsel for Eastern's statement, they are now being examined.

Minutes of Pan American have not yet been furnished and counsel for Pan American stated that he will have further information on the subject after the noon recess.

The Department of Justice may examine the witness.

(Off the record)

Examiner Wrenn: Concluded with your examination, Mr. McDowell.

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(fol. 42601) Gross examination.

By Mr. McDowell:

Q. Mr. Friendly, in response to Mr. Gambrell's last question, I understood you to state that if there be any provision in these contracts now involved in this proceeding which affect the public interest, then you think it possible that drafts of contracts may possibly be relevant to consideration in this proceeding?

A. That is not what I said, Mr. McDowell.

Examiner Wrenn: Will you read back Mr. Friendly's answer to Mr. Gambrell's question on that?

The Witness: I think I can answer it just as quickly.

Examiner Wrenn: All right.

A. What I said or what I intended to say was that I understood that where there is ambiguity in the contract, drafts sometimes are of use in enabling the court to determine the true meaning. I haven't yet heard of any provision of this contract as to which there is any ambiguity or at least, if there be one, as to which it is not quite possible to arrive at the correct understanding by questions of the two parties in this proceeding.

I therefore see no occasion to resort to drafts to cure any ambiguity, because there haven't been any pointed out.

By Mr. McDowell:

Q. I would like to ask you whether that answer extends, then, to the question of intent of the parties in making the contract. Do you feel that that intent is sufficiently apparent on the face of the contract without reference to any contracts?

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[fol. 4261] A. I think it is, but I would like to supplement it, if I might, as to the character of these drafts.

These drafts are not representations of the positions as between the parties. They were not submitted as official offers and counter-offers. They were work that Mr. Gesell and I did as lawyers, in many cases at least at the outset, without our clients, at least in my case, having seen them, in an effort to reach an agreement and I cannot conceive what possible relevancy such pieces of paper have.

Q. I am not sure whether I understood you correctly, but my impression is that you stated on direct examination that the discussions looking toward this contract originated with the Board of Directors of Panagra; is that correct?

A. That is right.

Q. Can you tell me on which side of the ownership of Panagra the motivation came?

Mr. Gesell: That was all described, Mr. Examiner, by Mr. Roig and the minutes show precisely what happened at those meetings. Mr. McDowell must not have been here when that was discussed because that was gone into at great length.

Examiner Wrenn: I think it is perfectly clear on the record. Do you have some particular point? Was it a question of your not having heard it, Mr. McDowell, or was it a point—some specific point—in addition to what has been said?

Mr. McDowell: I merely have not been informed on that point Mr. Examiner, and I think that the question bears upon the intent of the parties in making the contract.

Mr. Gelsell: I have no objection. I just wanted to point out it has all been covered.

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[fol. 4262] Examiner Wrenn: I think it has been answered, but the witness may answer it again.

The Witness: As Mr. McDowell wasn't here, perhaps we should, although it has been covered.

Perhaps it would be easier for him to read Mr. Roig's testimony.

Mr. McDowell: I see the answer is included in the minutes of Panagra which have been produced here. I will withdraw the question.

By Mr. McDowell:

Q. Mr. Friendly in response to a question by Mr. Schneider on cross examination, I understood you to say that there was nothing in the agreement involved in this proceeding to prevent Panagra from applying for an independent franchise to enter into the United States; is that correct?

A. That is right.

Q. I would like to know whether there is any understanding outside of the agreement now involved in this proceeding which would so prevent Panagra from applying?

A. There is no understanding whatever in regard to Panagra's applying or not applying. Panagra can apply at any time if its board of directors so authorized.

Q. Is it understood that this contract, and the arrangements contemplated under it for charter operation into the United States will settle the dispute which has existed for sometime between Pan American and Grace as to whether Panagra should be permitted to apply for an independent entry to the United States?

A. Yes, I should say so.

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[fol. 4263] Q. And as part of the settlement of that dispute, is it understood between the parties that Panagra will not, so long as this contract is in effect, apply for such independent entry?

A. No. I don't want to seem unduly technical, Mr. McDowell, but I want to be perfectly clear about this. There is nothing in these agreements that limits the ability of Panagra as a corporation to make such an application.

Of course, Panagra can make such an application only by authorization of the Board of Directors. Pan American's views have been opposed to the making of such application for the reasons that I have indicated. So far as I can see at the moment, I see no reason, and I have no reason to think that Pan American's views would change.

What may happen over 99 years is more than I can say. Now, as to the understanding with respect to Grace, that has already been testified to by Mr. Roig, and I am in complete accord with what he said.

Q. Mr. Roig said in another connection, in the course of his testimony, Mr. Friendly, that this contract removes the basic difficulty which has existed between Pan American and Grace with respect to Panagra.

Do you concur in that opinion? -

A. One hundred per cent..

Q. In other words, you think the basic difficulty has been the question of whether Panagra should be permitted to come into the United States independently?

A. I certainly do. I don't mean to say that we haven't had other matters on which we have had differences of

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{fol. 4264] opinion just as officers of a company may have differences of opinion with each other, but over the years this is the only one—at least over recent years—the only one that has given rise to any real difficulty.

Q. Mr. Friendly, would you not agree with me that that so-called basic difficulty is really merely an outgrowth of a more fundamental difficulty, which is the division of ownership in Panagra and division of control in such a way that each of the parties have disparate interests on occasion and have the power to exercise control which will block Panagra from taking any action detrimental to the interests of either party?

A. No, I would not agree with that.

Q. It is true, is it not, Mr. Friendly, that since the formation and beginning of operations of Panagra, the board of

directors of Panagra, composed of four representatives each from Pan American and from Grace, has on many occasions been on dead center, incapable of resolving the corporate will because of a dispute between Grace and Pan American as to whether the contemplated exercise of the corporate will was proper?

A. Well, there are two inaccuracies in that, Mr. McDowell—one minor and the other major. The minor one which I correct simply for the sake of the record, is that while it is true that Pan American and Grace have each always been represented by the same number of directors, the number has not always been four. There was a period when it was 3. It may have been less.

Getting, however, to the real intent of your question, [fol. 4265] I can think of no issue other than this, when all these philosophical consequences have ensued.

Q. Is it not true that from time to time there has been inability on the part of the Board of Directors of Panagra to resolve questions concerning areas in South America in which Panagra should operate?

A. You would say not, Mr. McDowell. The only question which I can remember on which there was a difference of opinion for an appreciable time, was the question of operation through Cali. Those discussions did take some months. There was a difference of opinion on it that was ultimately resolved. The view held by the Grace directors prevailed.

Q. And the existence of a difference of opinion has also occurred with respect to types of equipment to be used, has it not?

A. Well, there have been differences of opinion, but as I recall it, certainly I can recall no instance within the last 12 years when there was any difference of opinion with respect to equipment, as between Grace on the one hand and Pan American on the other, except perhaps this question that was directly related to the Cali matter.

We have had discussions about equipment just as I can assure you there are many differences of opinion within the Pan American board about types of equipment, and we have

discussed those 28 businessmen and we have come to conclusions.

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Panagra bought many types of equipment different from Pan American, with our complete approval, within the last two years. There have been two occasions of that:

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[fol. 4266] one within the last few months. Pan American was buying twin-engined equipment for replacement of the DC-3's. We surveyed the available planes, came to the conclusion that the Consolidated 240's were the best for our purposes.

All of the results of our surveys have been available to Panagra all the time. Panagra has studied the matter in cooperation with our technical department, came to the conclusion that for its purposes the Martins were preferable, because of the high altitude airports out of which Panagra operates.

After some discussion—I don't know whether it was 30 minutes or 3 days—our technical people were entirely in accord. Panagra bought the Martins and we bought the 240's.

Panagra has bought the PC-6's whereas we have not. There have been differences of opinion between individuals,

want as there are within any company, and I would certainly always be in any that I was connected with, but there has been no difference of opinion on party lines, and there has been no delay in action beyond the delay that I would think ought to occur before large commitments were made, to be sure you were doing the right thing.

Q. These differences of opinion have also existed with respect to—

Mr. Gesell: What does he mean "these differences of opinion"?

Mr. McDowell: The differences we have been discussing. This question goes back to the earlier question, and the differences of opinion between the directors serving on Panagra's board as representing on the one hand, Grace,

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[fol. 4267] and on the other hand, Pan American.

By Mr. McDowell:

Q. Now, these differences of opinion have existed also, Mr. Friendly, have they not, with respect to the type, nature and extent of facilities necessary to discharge Panagra's service to the public?

A. I of course am going to object—or not going to fall in for this "also". I presume you don't have any evil intent on it, but I want to be clear about my answer.

I know of no instance to my knowledge that has occurred within the last 10 or 12 years—I should think that might be long enough—where there has been any division of opinion about ground equipment or facilities as between Grace on the one hand and Pan American on the other. There were some differences of opinion, if you want to go back to the late 20's or the early 30's, about radio and such things, but they were resolved, again after a reasonable period, and they have not occurred again on any basis, that involved a conflict

~~contract~~ between the two owners.

Q. That difference of opinion to which I referred earlier, Mr. Friendly, is also true with respect to the—

A. Why can't we have the question directly?

Mr. Hamilton: I have no disposition to be captious, but I do suggest it would be more appropriate if Mr. McDowell phrased his questions independently, instead of carrying forward an overtone that I don't believe that the record supports.

Mr. McDowell: I think, Mr. Examiner, that the witness has understood the questions without difficulty and I think it is a convenient way of shortening the record.

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[fol. 4268] Mr. Hamilton: Mr. Examiner, I suggest that the witness just previously stated that he didn't.

Examiner Wren: Suppose you clarify your question.

By Mr. McDowell:

Q. Shall I say then, Mr. Friendly, that directors on the Board of Panagra representing the Pan American and directors representing Grace on the Board of Panagra have

also differed with respect to the adequacy and character of services performed for Panagra by each of the parent companies?

A. I can't recall that that matter has come before the directors, or in the last analysis, occasioned any real difference of opinion. There have been times when Mr. Roig has felt that certain services performed by Pan American were not what they desired, and he has called those to our attention, and we have to the best of our ability remedied the defects of which he complained.

don't

I assume, although I know—perhaps I shouldn't say so—there have been occasions when we had some fault to find about services rendered in South America by Grace.

Those matters never came before the Board of Directors at all. They were handled by administrative action by the officers of the company, and the disposition of the parties rendering the services was to cure any inadequacies that had been found.

Q. The question of the inadequacy of Pan American's Miami-Canal Zone connecting service?

A. That of course you appreciate, Mr. McDowell, is not (fol. 4269) within the ambit of your question about services rendered by the parent company.

Pan American's connecting service to Canal Zone is an independent transportation operation conducted by Pan American Airways in which to be sure Panagra had a very vital interest. There were complaints about it certainly.

Q. Mr. Friendly, would you agree with me that the record in Docket 779 will show that with respect to each of these differences of opinion and failures to agree between Pan American and Grace directors on the Board of Panagra, charges were made by Pan American on the one hand and Grace on the other, and a great deal of evidence was offered by both in the course of that proceeding, to bring out these differences of opinion, for the purpose of showing that in various instances each of the parent companies had blocked action by Panagra or had retarded action by Panagra as being contrary to the special interests of that particular parent.

Mr. Hamilton: Mr. Examiner, I don't wish to be technical but I submit that what the record in 779 shows is established fact by that record.

Examiner Wrenn: I think you are right on that. The record has been incorporated in here. I don't get the pertinency of your question, Mr. McDowell.

Mr. McDowell: The purpose of the question, Mr. Examiner, is to secure from this witness his answer and opinion as to whether or not these difficulties in making up the corporate mind of Panagra have actually been attributable to the differences in the fundamental interests of

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[fol. 4270] the two owners.

Mr. Hamilton: Mr. Examiner, as I recall it, that was one of the very first questions that Mr. McDowell put to Mr. Friendly and it was answered.

Examiner Wrenn: I rather feel that he has answered the question, Mr. McDowell. I don't have any desire to prevent you from developing any information that you think is material and necessary toward deciding this case.

Mr. McDowell: Well, I will put it this way, Mr. Examiner: I understood the witness to say that the only real conflict there had ever been between the parties in the Panagra board was the question of Panagra's independent entry into the United States.

Examiner Wrenn: Do you want him to reflect?

Mr. McDowell: I want the record to reflect that there have been other serious difficulties and delays in the exercise of Panagra's corporate will occasioned by the special private interests of the two parent companies.

Mr. Hamilton: Mr. Examiner, I believe that has all been covered.

Mr. Gesell: It seems to me that gets down particularly, Mr. Examiner, to the whole area of who is at fault? That is one thing I thought we were at least getting pretty clearly out of this record. Every one of these issues is.

Examiner Wrenn: I certainly have no desire to get that in this record. I don't think that has any bearing, who is at fault.

Mr. McDowell: I am not attempting to raise the question of who is at fault. I think you can appreciate what I am

[fol. 4271] getting at here.

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Examiner Wrenn: What are you getting at, whether there has been one basic difficulty or whether there have been more?

Mr. McDowell: That is right.

Examiner Wrenn: I have no objection to his answering that.

A. I think I have answered it once, but I would like to state that—I am going back now over a period of 17 years, and I am doing my best, but as I look back on that period, apart from this question of the extension to the United States, I can think of only two matters in which there was any appreciable delay in arriving at a settlement.

One was the Cali matter, the other was the question of radio and so forth, which goes back to practically prehistoric times.

Now, I don't say that, as to either of those matters, the delay was in any way inordinate. ~~There~~ were serious matters, the views on ~~every~~ side were strongly held and sincerely held, I think, and they were solved.

Now, as to what the motivation was or wasn't, I am not going to testify. The record will show what it will show. But the facts are that with the exception of this extension issue there has been no issue which has not been solved within a reasonable time and so far as my recollection goes, only those two that took any substantial time at all.

~ By Mr. McDowell:

Q. Do you agree that with respect to any difference of opinion which might arise between Grace and Pan American

{fol. 4272} can Corporation, in the management of Panagra, either of the latter two has the power, should it consider that matter in issue to be sufficiently important, to block any determination of the question by Panagra's board of directors.

Examiner Wrenn: Is that under this contract or independent of it now?

Mr. McDowell: Independent of this contract.

A. I think that is a very important exception, of course, differences of opinion. Under this contract machinery for handling it has been arrived at.

As to other questions which might conceivably arise, it is perfectly true that as a theoretical matter, that either party could block action just as in any other case, where the stock of a corporation is owned half by one party and half by another, and each is equally represented, of which there are many hundreds in this country.

By Mr. McDowell:

Q. Now, as you suggested, Mr. Friendly, there are provisions in this contract which look to the resolution of any such difficulties, and I would like to ask whether you are relying principally on the provision for arbitration.

A. No. We are relying on the fact that we are all business men, that we are interested in this company, that we have quite a large financial stake in it, and that we *will* get along with each other, as we have in the past, in substantially every question that has arisen.

Q. I understood you, Mr. Friendly, to say in response to a question by Mr. Schneider, that you continue to be of the opinion today that 100 per cent control by a steam-

[fol. 4273] ship company of an air carrier would be bad and not in the public interest, is that correct?

A. That is correct.

Q. Do you not agree, Mr. Friendly, that if Grace continues to have, under this basic arrangement between Grace and Pan American for the divided ownership of Pan American, a 50 per cent control which at least gives theoretical power, as you put it, of negative control?

A. I think that is true.

Q. But you do not consider that bad?

A. Not in the particular circumstances we have here. I do not, under these agreements.

Q. Mr. Friendly, I was particularly interested in your remarks about Pan American's "monopoly" and you recited quite a substantial list of other companies engaged in air transportation.

I wonder if you could give us the percentage of the traffic between the United States and South America which is carried on one hand by your swarming competitors, as against that percentage carried by Pan American, including Panagra, on the other hand.

A. Well, if you want me to give the percentage now, I can give that, and if you want to ask a fair question and, not one limited to a situation where these other people are just getting started and have just received authorization, I will answer that, too.

Examiner Wrehm: Suppose you give us the benefit of both of them.

Mr. McDowell: I think the record should show both, al-

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(fol. 4274) though I have some difficulty in seeing how you can say what percentage of the traffic future competitors will carry.

The Witness: I can see tremendous difficulty, and I have been seeing it for years in any government department looking at a situation based on a keyhole view which doesn't go beyond the end of your nose and refusing to look at agreements that this very government has signed which are just as certain to produce results as two and two are to make four. Mr. McDowell.

Now, let's get back to the situation: I can't give you percentages. KLM is carrying a very large amount of traffic between Miami and Havana and Port au Prince and Curaçao. The records of the Board show how much. There was an opinion about it showing it was very substantial.

The TACA system which does a lot of carrying which it is not authorized to do has been operating a great number of flights into Miami all of last winter. They ran as much as, I think, ten flights a day from Havana until the season was over, and I can't say whether that was 5 per cent or 10 per cent, but it was big business.

The American companies, of course, are getting started. Eastern started its service to Puerto Rico early in September, and our load factors on that route took a very nice drop immediately.

American Air Lines has been operating into Mexico, and in part because of the inadequate service that we get from

Eastern, American carries much more business to Mexico than we do.

\* Aerovias Braniff, a Mexican Company, which Mr. Tom

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[fol. 4275] Braniff went down and organized in Mexico, and got a permit to go over to the border connecting with his own line carries a very large amount of traffic into Mexico City.

Espresso, the Cuban Company, is a substantial carrier now between Havana and Miami. It carries all the Cuban mail, I may say, which we had previously carried.

I could go on.

Let's look ahead. What is the sense of closing your eyes to BOAC and just assume that it doesn't exist which we have been doing for the past few years. Do we think that are fooling

the British ~~are~~ ~~going~~, that they don't intend to do anything in the air? Do we think they come here and get these rights to run an airline through the United States to Latin America just to have something on paper?

Don't we know enough about what transportation means to Great Britain to understand that the British are going after that and going after it in a big way. Talk to some of the members of the Civil Aeronautics Board who have been negotiating with the Argentines and the Brazilians and see what they think as to whether these foreign companies are going to carry some business.

I am not going to say as to whether in the future it is going to be 30 per cent foreign and 70 per cent American, or 50 per cent foreign and 50 per cent American, or exactly what the percentage of the American share Pan American is going to have, but I am sure that our percentage is going to be very very well under the 50 per cent when we get all through, well under it.

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[fol. 4276] By Mr. McDowell:

Q. Thank you, Mr. Friendly.

Now, passing for a moment to the question of future competition, could you give us past and present percentages on competition now existing between the United States and South America?

A. No, I can't.

Q. Could you undertake to supply that information?

A. No. We can give you our own figures. Other agencies can give you the rest.

Q. With respect to some of the South American companies which you mentioned as being competitors in South America: do you exclude therefrom, Mr. Friendly, those South American companies in which Pan American owns a substantial interest?

A. Do I exclude them?

Q. Exclude them from that list of competitors?

A. Well, they are competitors. Why should I exclude them?

Q. You don't consider Panagra a competitor, do you?

A. I don't consider Panagra a competitor except to Buenos Aires because that is the only common point we have with them. They are competitors to Buenos Aires, definitely, and to Montevideo.

Q. How about some of the others? Could you tell us what percentage of control Pan American owns in a number of the competitors in the South American companies which you listed as competitors?

Examiner Wrenn: I think you are a little vague and indefinite there. Do you have a particular company in mind?

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[fol. 4277] Mr. McDowell: I am referring to the companies which he listed. I don't know what companies he had in mind. He said there were a great many companies, and I think with respect to the companies which he is putting forward as competitors the record doesn't show to what extent they are independent competitors and to what extent they are competitors of the sort that Panagra is a competitor.

The Witness: I will be glad to answer.

Examiner Wrenn: All right.

A. I referred to Brazilian companies. There are, I don't know how many airlines in Brazil, Mr. McDowell, probably 10 or 12. We have less than a majority interest in one of them. Whether that is the airline that the Brazilians will authorize to come to the United States is not yet determined. They may authorize one or two or three.

Certainly I don't think ours will be the only one that they authorize.

By Mr. McDowell:

Q. Could you give us the exact percentage?

A. If you won't hold me to one or two per cent, it is in the neighborhood of 46 per cent. It might be 47 but it is in that range.

Q. What is the name of the company?

do

A. Panair do Brasil.

In Mexico—well, there are probably about 20 airlines, there conservatively in which we have an interest in two.

The only one of those two that is planning any operation to the United States is Mexicana. We have again about a 45 or 46 per cent interest in that.

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[fol. 4278] There are other Mexican airlines that are candidates for permits to operate to this country.

Of the two Colombian companies that we have spoken of—TACA de Colombia and Avianca—we have a stock interest in Avianca amounting, I think, to 48 per cent.

However, under the Colombian law our voting rights are limited to 25 per cent.

In Cuba—

Q. May I ask your percentage ownership. You say you had a percentage in TACA.

A. Oh, no.

Q. I am sorry, I misunderstood you.

A. Control of that is in TWA. We have had a company in Cuba which I did not mention as a competitor because we were expecting to sell it. Cubana—our stock interest in that, the only one of these in which we have had a majority in recent months—is 52 per cent, but that we are proposing to sell to the Espresso Company in which we have no interest whatever and will have none after the sale is consummated.

I want, however, to add one thing: we have spoken about stock ownership. That gives a wholly misleading impression. The directors of these companies are and in many cases have to be—Nationals of their various countries. In

some cases we do not have any representative on the board. In other cases we may have one.

In no case do we have anything approaching—not only not a majority—we don't even have anything approaching a substantial minority. The executive administration of

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[fol. 4279] these companies is vested in men who are prominent citizens of their own country, who run those companies as their national interest dictates, and we encourage them to do that, and when they want to compete with us, they compete with us without any let or hindrance on our part.

If you want to put those companies in a compartment, brand them as somewhat different, I have no objection to it, I think that should be noted, and I assure you I had no intention to conceal it, but in the first place it is not true that we control them, and in the second place they are only a small element in this entire competitive situation.

(Discussion off the record)

By Mr. McDowell:

Q. Mr. Friendly, have you mentioned all the companies in South America, all the air operating companies, in which Pan American owns an interest?

A. All the ones that are engaged in international operations.

Q. You have mentioned only those that are engaged in international operations?

A. That is right.

Q. Those that are not engaged in international operations are also important in the air traffic there, are they not?

A. To some minor extent.

Q. Could you give us the information concerning those?

A. I don't have that at hand. There are a number of

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[fol. 4280] them. They are companies of very small size.

Q. Would you be willing to undertake to supply that?

A. If it has any relevancy here, I confess I can't see it.

Mr. McDowell: I think it is quite relevant, but there is no argument about that, is there, Mr. Examiner?

The Witness: I suggest we also get some statistics as to non-competitive air routes in the United States at the same time.

Mr. McDowell: I will not undertake to put in the information which I think your counsel would like to have brought forward, Mr. Friendly.

Examiner Wrenn: Now, what is the situation here? Is there going to be an agreement to--

Mr. McDowell: I understand that there is an undertaking by the witness to produce the information which I have requested concerning the ownership by Pan American in non-international South American air operating companies.

Mr. Hamilton: That is right. We will produce that.

Examiner Wrenn: Did I also understand that in doing that, Mr. Friendly wants to show something regarding non-competitive companies in this country, is that it?

The Witness: Yes and I think we ought to get in the TWA network and a few other things if we are going into all these things.

Mr. McDowell: I have no objection, Mr. Examiner.

Mr. Gesell: It is my impression that the Form 2380's were stipulated into this record at the request of Pan American and Panagra and that those forms show the

[fol. 4281] holdings of all the airlines and other airlines, and it is all laid out here, isn't that true?

Examiner Wrenn: Is that correct, Mr. Highsaw?

Mr. Schneider: I looked it over and I can't find it. It is not available.

Mr. Gesell: Is Mr. McDowell asking this question for you?

Mr. Schneider: No, he isn't.

Mr. McDowell: In the light of the witness' answer a few moments ago about the competition which Pan American is meeting in South America, it is appropriate that the record disclose directly on the face of the record and not through an exhibit the extent to which that is genuine competition.

Mr. Hamilton: We will provide information which is not already in the record in this case and of course reserve

the right to amplify it any way we see fit to give additional information to give a complete picture to which I take it Mr. McDowell has no objection.

Mr. McDowell: Oh, no.

Examiner Wrenn: The record will so show.

Mr. McDowell: I would like to know if that could be expanded a little bit to include—unless Mr. Friendly is able to supply that information at the moment—information concerning past ownership by Pan American in South American air-operating companies.

Examiner Wrenn: Back to when?

Mr. McDowell: Back as far as 1928. I would like to ask, in order to bring out the relevance of that request for

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[fol. 4282] information, I would like to ask Mr. Friendly whether it is not true that Pan American has in the past controlled or held stock ownership in South American air operating companies which control or ownership has subsequently been disposed of, with agreements with the purchasers which have a bearing, and affect the question of the future ability of those companies to compete with Pan American.

By Mr. McDowell:

Q. Is that not true, Mr. Friendly?

A. Which question? Will you ask one question at a time? May I have that done, Mr. Examiner?

Mr. McDowell: I think the record will show that first I asked counsel if he would undertake to supply the information about past ownership, and when the question was raised as to its relevance, then I asked this question, Mr. Friendly:

As to whether or not it is true that in the past Pan American has owned control or ownership shares—certain South American Companies—which control or ownership shares have been disposed of with agreements with purchasers which restrict the competition of those companies with Pan American.

Mr. Hamilton: If the Examiner please, I am a little confused on the state of this record. My understanding

was that I undertook to supply Mr. McDowell information if the point were not adequately covered by the record, information on the extent to which Pan American now owns stock interests in airlines in South America together with such additional information as we thought appropriate.

[fol. 4283] ate in order to give a well-rounded and complete picture.

Examiner Wrenn: That reflects my understanding of the undertaking.

Mr. McDowell: It reflects mine to.

Now, I am asking whether it can be expanded.

The Witness: I can answer the question.

We have at times owned a larger percentage in some of the companies I mentioned than we now do. We have disposed of what we have, ~~and~~ pursuant to the requirements of local law in some instances, and because of our belief that it was consistent with this government's policy toward Latin America to have ~~these~~ Nationals of those countries own these companies. I know of no instance in which any such agreement as you describe has been made.

By Mr. McDowell:

Q. Mr. Friendly, could you extend that answer as to no instance in which such an agreement has been made, as to the sale by Panagra of any previous ownership which it held in any South American operating company?

I know.

A. No, ~~a~~ nothing about that.

Mr. McDowell: I would like to ask Mr. Gesell whether you could supply information of the same sort that Mr. Hamilton is going to supply?

Mr. Gesell: It has been all supplied in the record already.

By Mr. McDowell:

Q. Mr. Friendly, I understood you to testify, in describing the relationship between Pan American and Panagra, that there has in the past been a very close relationship.

[fol. 4284] and that under this relationship Panagra got the benefit of commercial arrangements negotiated by Pan American in the United States, including particularly the sales representation, engineering and technical service and procurement of aircraft.

And that the independent entry into the United States of Panagra would destroy this relationship, put Panagra into competition with Pan American, and destroy Panagra, is that a fair summary of your testimony on that point?

A. Except for the last word, I don't think I said it would destroy Panagra. I said it would seriously injure Panagra and prejudice our investment in it.

Q. There was a difference of opinion on that point between Pan American and Grace, was there not?

A. Certainly was. Both people held their views very sincerely

strongly and very ~~singularly~~, I am sure.

Q. Do you have respect for the business judgment of the Grace directors on the Panagra Board?

Examiner Wrenn: Where are we going on that, Mr. McDowell?

Mr. McDowell: I am merely undertaking to qualify the statement made by the witness concerning the injurious effect of an independent relationship between Panagra and Pan American upon Panagra, showing by getting the witness to agree, that Pan American's partner in that joint enterprise known as Panagra, had an entirely different opinion and fought for that independent relationship.

Examiner Wrenn: Then what bearing does that have on the statement they have made in the first page of the application for agreement, I believe, that they have re-

[fol. 4285] solved their differences and are here now pressing this contract.

Mr. McDowell: I think it has a very important bearing on the question as to whether or not the contract brought forward here for approval is really in the public interest and is really necessary for the continued welfare of Panagra and Pan American.

Examiner Wrenn: I don't see your point when you have the chief official of Panagra here and the Vice President of Grace and the Vice President and General Counsel of Pan American both testifying on their present attitude. I don't see your point, admitting what has taken place in the past.

Mr. McDowell: I think, Mr. Examiner—perhaps I am merely not expressing it clearly, but it seems to me that it is simply a question of whether Mr. Friendly would agree that people who held a different—partners in the enterprise held a different point of view, and that they were actually effective businessmen participating actively in the enterprise.

Mr. Hamilton: I submit the witness has stated.

Mr. Gesell: I think I could testify for Mr. Friendly on

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this point that he perhaps would not want to testify to that obviously when he has a difference of opinion even with a good businessman he thinks his own opinion is better than that of the businessman and I can't see what that has to do with this case.

Mr. McDowell: Is it your understanding, Mr. Examiner, that the information is clear enough on the record?

Examiner Wrenn: So far as I can understand your

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[fol. 4286] question, Mr. McDowell, I feel like it has been answered.

Mr. McDowell: I will withdraw the question then.

Examiner Wrenn: You can let it stand if you like. I feel like it has been answered as far as I understand it.

By Mr. McDowell:

Q. Mr. Friendly, you stated that Pan American has no interest contrary to the interests of Panagra, I believe, is that correct?

A. I would much prefer if you could ask me direct questions, Mr. McDowell, ~~except~~ "you stated this and you stated that." The record will show what I stated. I don't say there is a substantial inaccuracy but we can't get these

matters from the record. I remember what I stated and if it is not clear I will be glad to try to explain it.

Q. I appreciate that and I think you appreciate it as very difficult to set up the question without giving that.

A. I am sorry, I don't understand that at all.

Q. I have no intention to misstate your previous testimony.

Examiner Wrenn: How much more examination do you have of the witness?

Mr. McDowell: I should think perhaps five minutes.

Examiner Wrenn: Without any thought of curtailing you or anything if you think you can finish within that time we will continue. Otherwise we will adjourn for lunch.

Mr. McDowell: I would like very much to continue.

Examiner Wrenn: All right.

Mr. McDowell: I don't recall whether the question is before the witness or not.

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[fol: 4287] By Mr. McDowell:

Q. I want to ask, Mr. Friendly, whether in his opinion the fact that only  $4\frac{1}{2}$  per cent of Panagra's revenues represent traffic to and from Buenos Aires, and I want to add parenthetically that that  $4\frac{1}{2}$  per cent is accepting your figures—in other words, I am not suggesting that that is the figure—

A. I understand.

Q. —but assuming for the sake of argument that you are correct on that, do you think that the smallness of that percentage renders Panagra, in its present geographical limitation, not competitive to Pan American?

Mr. Hamilton: I would like to know what the implications of the "limitation" are. You mean by that, Mr. McDowell—well, frankly, I just don't quite understand the question.

The Witness: I think I do.

Mr. Hamilton: If the witness understands it, all right.

Mr. McDowell: In deference to the witness I am not repeating his testimony but he said he could recall.

A. Of course we compete for Buenos Aires traffic. Whether the amount is 1 per cent or 10 per cent we compete for it. What I was endeavoring to point out was that any theoretical interest which Pan American might have in diverting this very small percentage of Buenos Aires traffic that it could divert from a company which it owns half of, and where in addition it gets a haul of substantial length on its own run, it is insignificant compared to the benefits which Pan American gets from a healthy Panagra with 95½ per cent of the traffic beyond any possible power of Pan

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[fol. 4288] American to divert, that there is no danger whatever from the public interest standpoint in that position.

Q. It is only when Panagra threatens to enter the United States independently that you consider Panagra a threat to Pan American competitively, is that correct?

A. I didn't say that.

Q. I am asking you whether you agree to that.

A. Of course what I said, and I would like to have it clear, was that we felt that for Panagra to get itself into that position was not a good thing for Panagra.

So far as its effect on Pan American was concerned, it is perfectly clear to my mind that if Panagra were extended from Miami to Balboa, or vice versa, it would have a most serious effect upon Pan American's Miami-Balboa route.

Panagra, assuming that it could equip itself with the proper kind of sales organization, which it would do at great expense and perhaps come to the Treasury for assistance on that, would in some way get a great deal of the through business and a great deal of the local business.

It would get more of the through business, I think, than we could hold unless we were able to work out some arrangement with a foreign airline or someone else south of Balboa, and it should do quite well I should think on the local business, and we would be placed in direct paralleling competition, which the Civil Aeronautics Board has recognized as the most virulent form of competition on that route, and with Panagra having a considerable advantage in its ability to handle the through traffic.

[fol. 4289] By Mr. McDowell:

Q. I didn't want to cut you off, Mr. Friendly, but I wanted to ask you:

There has been reference here to the fact that in the past Panagra rates and schedules have been submitted—confine the question to rates—have been submitted to Pan American for clearance.

Do you agree that that has been the fact?

A. I would prefer if you would ask that of Mr. Lounsbury or Mr. deGroot. I don't have the details which those witnesses have.

Q. I think perhaps you are in a better position to answer the question I want to ask with respect to that, and that is whether or not, assuming that that has been the practice, that such practice has been pursuant to an agreement between Pan American and Grace?

A. Well, I certainly know of no agreement whatever between Pan American and Grace on that subject. I think that what has been done—and my reluctance to answer your previous question is simply that I don't have the detailed knowledge of the technical terms and exactly what the procedures are. The matters have been taken up simply as a matter of good business and nothing more than that.

Mr. Hamilton: Mr. Examiner, I can just state for Mr. McDowell on the record that we will have witnesses who will be prepared to go into detail on the rates and fares procedures and practice.

Mr. McDowell: The reason I raised the question with this witness—I appreciate he is not going to testify on rates

[fol. 4290] and fares—but I understood him to say in qualifying himself, that with the exception of Mr. Trippe he was the best qualified person in the United States, or language to that effect, to discuss the question of the relationship of Pan American and Panagra from the Pan American point of view.

Mr. Hamilton: I think he has testified that he has been associated with Pan American-Panagra matters for a long time.

Examiner Wrenn: The record will show that. Do you have many additional questions?

Mr. McDowell: I have two more questions, and I just don't know how long the witness will take to answer them.

By Mr. McDowell:

Q. The reason I asked that question, I wanted to know what you would testify with respect to the understandings between Grace and Pan American which were part of the original contract of association and formation of Panagra.

A. I can definitely testify that there is no agreement of any kind or description between Grace and Pan American on the subject of rates.

Q. Do you know whether or not there was an agreement at the time Panagra was organized, between Pan American and Grace, agreement or understanding, that Panagra would confine its operations to the West Coast whereas Pan American would confine its operations to the East Coast.

Mr. Gesell: Mr. Examiner, that is the subject of 779. That is what 779 had been concerned with until the record was closed. There was dispute between the parties as to

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[fol. 4291] that; that dispute continues and all the facts are in the record. What is the purpose of asking Mr. Friendly to recite his side of that controversy again, which is clearly set forth in the record? Where are we progressing for? The public interest in this contract? Honest to goodness, as I listen to these proceedings I wonder whether anybody remembers the contract.

Examiner Wrenn: All right, Mr. McDowell.

The Witness: May I have the question read?

Examiner Wrenn: Do you want to answer the question?

The Witness: No, I thought you had taken a position.

Mr. McDowell: The reason I asked this question of Mr. Friendly is for the same reason I indicated to Mr. Hamilton a moment ago that I asked the rate question, that Mr. Friendly is represented here as a man who is particularly familiar with the early organization of Panagra from the Pan American point of view and I would like to have his answer on that question.

I think it is very relevant to the determination of this matter.

Examiner Wrenn: Of what importance is it? Is it important only if they have changed any such position?

Mr. McDowell: I think it is important whether they have changed it or not. If they haven't changed, I think it is important, the original relationship between Pan American and Grace I think is very important in determining, in the history of that relationship, in determining the suitability of Panagra to discharge the service which it proposes to undertake under this contract.

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[fol. 4292] Examiner Wrenn: Aren't you going back to 779?

Mr. McDowell: That matter was touched upon in 779 but we do not in 779 have the benefit of Mr. Friendly's testimony on it.

Examiner Wrenn: I don't see what bearing Mr. Friendly's testimony has on the question of us, on that point, I mean.

Mr. McDowell: From the point that he has represented himself as an expert on that matter, the best informed man in the United States.

The Witness: I object to that characterization. It seems to me we are entitled to a little fairness from a representative of a great agency in the government.

Mr. Gambrell: I would like to have the information, Mr. Examiner. I think it is most pertinent.

Examiner Wrenn: On the strength of what I have heard I am going to sustain the objection. If there is any more, I think we better recess for lunch.

Mr. Highsaw: Mr. Examiner, is there a formal objection to that question?

Mr. Gesell: There most certainly was.

Mr. Schneider: By counsel for Mr. Friendly?

Mr. Gesell: I have a right as a party to object to any question.

Mr. Schneider: I am merely asking for information. I was not raising a point. I want to know whether Mr. Hamilton objected.

Mr. Hamilton: I think the record shows that Mr. Gesell objected.

Mr. Schneider: I merely wanted to know.

[fol. 4293] Examiner Wrenn: We will recess until two o'clock.

(Whereupon, at 12:30 o'clock p.m., a recess was taken to 2 o'clock p.m. the same day.)

[fol. 4294] **AFTERNOON SESSION** 2 p.m.

Examiner Wrenn: Come to order please.

Mr. Hamilton: May I state for the record that the Pan American minutes that were referred to in the morning session will be here and be available in the morning.

Examiner Wrenn: All right. Thank you, sir.

Mr. McDowell: Will there be sufficient copies to supply copies to counsel or will they be included in the record?

Mr. Hamilton: We will be glad to supply copies. I believe the record also shows that I have an objection to the question that is pending.

Examiner Wrenn: While we are on that point when you said Pan American, were you referring to all the minutes of Pan American?

Mr. Hamilton: All the minutes that have been requested.

Examiner Wrenn: What about the situation on the Grace?

Mr. Gesell: Same.

Mr. McDowell: May I interrupt there?

Examiner Wrenn: All right, Mr. McDowell.

Mr. McDowell: I am not certain from Mr. Hamilton's answer whether he understood that the Department of Justice is requesting that the minutes of the Pan American Corp., the holding company, be included as well as those of the operating company.

Mr. Hamilton: Did you say you had an objection pending? I wasn't quite clear as to the state of the record.

[fol. 4295] Examiner Wrenn: I thought there had been a ruling. Any way, we will pick up and go ahead, Mr. McDowell.

HENRY J. FRIENDLY, resumed the stand, was examined and testified as follows:

Cross-examination (continued).

By Mr. McDowell:

Q. Mr. Friendly, we were discussing at the close of the session this morning the relationship between Pan American and Panagra in South America. I would like to ask you whether Pan American owns, either directly or indirectly, any operating rights in countries located on the West Coast of South America?

A. No, unless you consider the fact that we also operate into the northern part of Colombia,—we have rights of course that cover our operations there—but we do not own the rights under which Panagra operates.

Q. Pardon me.

A. We do not own any rights or have any rights in Colombia under which Panagra operates.

Q. I am speaking apart from your interest in Panagra.

A. We operate into Colombia and we have a right to do it through the Colombian government.

Q. Is that through a subsidiary?

A. Actually we have two operations in Colombia: one our own and the other a very small operation known as UMCIA, which operates from Panama Canal to Turbo and Medellin.

Q. Does your operation in Colombia connect with the routes operated by Panagra in that country?

A. No.

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[fol. 4296] Q. Other than those operations which you mentioned, I want to be clear that you own no interest—also that your answer include or preclude any possibility of your having any interest through other companies which own operating rights on the West Coast other than Panagra.

A. Avianca, of course, is a Colombian company which operates in Colombia and also to Ecuador and plans to operate further south. I am not familiar with just what

they have, but they obviously must have some permits from Ecuadorian government to permit them to do that.

Q. I believe you testified this morning, Mr. Friendly, that Pan American owns some interest in Avianca.

A. Yes, I think it is approximately 48 per cent, although under the Colombian law we can only vote up to the extent of 25 per cent.

Q. Is the route of Avianca on the west coast of South America physically competitive with the route of Panagra?

A. It would be as far as Avianca operates.

Q. How far can you say again, is that?

A. Into Ecuador.

Q. From where?

A. Avianca is a Colombian airline that operates to a great many points in Colombia. I think the actual routing is shown on the time tables that are in evidence, Mr. McDowell. It is in Exhibit 15, time table 6-A shows—yes, if you look at the—there is a route from Cali, Quito, to Guayaquil, which operates three times a week, also an operation from Tipiales to Quito which operates once a week.

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[fol. 4297] Q. Do you know whether Panagra owns any operating rights in any countries on the East Coast of South America?

A. Not to my knowledge except of course that it operates into the Argentine.

Mr. Giesell: And Brazil?

A. Oh, yes, and over the Brazilian border. It has rights which are provided for in Brazil under the recently negotiated governmental agreement, simply to operate to a point right over the border.

By Mr. McDowell:

Q. Is there any agreement or understanding between Pan American and Grace so far as you know which would preclude either Pan American from buying operating rights or undertaking operations on the West Coast, or on the other hand Panagra from buying operating rights or undertaking operations on the East Coast?

A. Well, that subject of course was covered at great length in Docket 779, and was reviewed by Mr. Roig. There is the letter of September 1928 which goes back before my time which states the general basis on which Panagra was organized which was to operate an airline down the west coast.

There was a difference of opinion as to what the legal effect of that is, as to whether it is simply a general statement of plan or something more, but I don't know that I can add anything to that.

Q. Perhaps you can bring the matter up to date. What is your understanding of the situation at the present time

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[fol. 4298] with respect to any such understandings?

A. Well, there has been no change in the situation since the record in Docket 779 was completed, it occurs to me.

Q. In connection with the negotiation of the contract involved in this proceeding, did you participate in any discussions with reference to such a division of territory?

A. No.

Q. Mr. Friendly, I would like to know in brief how you as an officer of Pan American viewed the relationship between Pan American and Panagra, the essential relationship between the two companies?

Do you regard Panagra's essentially as a subsidiary of Pan American or as an independent entity?

A. I regard Panagra as a company in which Pan American has a 50 per cent stock interest and equal representation on our Board of Directors which connects with our line at Canal Zone and in whose welfare we have a very great interest. You can draw your own inferences from what particular terms you wish to apply to that. I don't think of the matter in those terms.

Mr. McDowell: That is all.

Examiner Wrenn: Public Counsel may examine the witness.

Mr. Highsaw: I assume these references to all these agreements like the Bermuda agreement, that those agreements are to be considered as a part of the record for brief writing and that sort of thing.

Mr. Gesell: Certainly the Board can take notice of something like this Bermuda agreement which has been nego-

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[fol. 4299] tiated.

Mr. Hamilton: I have no objection.

Cross examination.

By Mr. Highsaw:

Q. Mr. Friendly, do you know whether this agreement has ever been filed with the Board between Pan American and Eastern?

A. I have seen a copy of the letter transmitting it for filing.

Examiner Wrenn: You are talking about the one we marked this morning—32.

Mr. Highsaw: That is right, Mr. Examiner.

By Mr. Highsaw:

Q. I believe there was some reference to hundreds of companies in the United States in which there was a co-owner situation, either similar or somewhat similar to the Panagra situation. In that reference, did you intend to refer to any similar situation existing in air transportation?

A. I know of none, although I don't know that there aren't.

Q. Did you intend in that reference to refer to any similar situation in any other transportation field?

A. I am sure there are a great many of them. I know there are many of them in the motor field. I know that the Matson Line and the American Hawaiian Line had such a company which operated to the South Pacific, and I have been told by both parties that it operated with great success and harmony. I am sure there are a great many such instances.

Q. You say there are some in the motor field?

A. Oh, yes.

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[fol. 4300] Q. Do you know of some in the motor field? there are

A. I think a great many.

Q. Do you know of any similar in the railroad field?

A. I believe the Burlington is owned fifty-fifty by the Great Northern and the Northern Pacific. I am not saying there aren't many more. I might mention another one very near here which is owned in equal proportions, namely, the RF and P. That isn't a fifty-fifty, but I think it is a 33 1/3 between the Southern, the Seaboard, and the Atlantic Coast Line.

Q. Do you know anything about the experiences of these particular companies you have been naming, other than the reference you made to the steamship?

A. No. It keeps me busy knowing Pan American.

Q. Referring to competition between Pan American and Panagra, in the event that Panagra should have a route in the United States, I gathered you definitely thought that competition was bad and I also gathered you thought that the volume of traffic was not sufficient to support such competition, isn't that correct?

A. Well, there are quite a few things wrapped up in that; Mr. Highsaw, I tried to make it clear that I regarded this question of competition between Panagra and Pan American as something quite separate and distinct from any general question as to competition. I never thought that competition was bad. The whole argument, with which you are familiar, has never been about the question of competition as being bad but about the question of whether it was a good idea for the United States to divide its own

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[fol. 4301] efforts up as against foreigners or not.

However, the important point is that we regard this question of Panagra's operations between Miami and the Canal Zone as resting on very special facts, and not really related to the general question.

However, in answer to your other question, I definitely think that the volume of traffic between the United States and the Canal Zone which in my opinion is not enough to support two American flag services in addition to all of the foreign competition that we are going to have there, is certainly not sufficient to support a third, which is the problem as it now poses itself.

Q. In referring to the contract, I believe that you made reference to several provisions where they have been worked out in general terms and the details have not been worked out. I have noticed at least three or four paragraphs, 8, 13, 14 and 17, I believe. I was wondering why the details were not worked out to any greater extent than they were at the time this contract was executed. Is it matter of time or you just didn't feel this was the proper place to put them?

A. I think it might be more proper if we took them up one by one.

Q. All right.

A. I would prefer not to make a general answer. 8, I believe, is the first one.

Q. Paragraph 8, yes.

A. I think the reason for not working out paragraph 8, which deals with training in more detail, was that a

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[fol. 4302] training plan involves the development of a curriculum which the person desiring the training wishes, and a method of payment, designation of a place where it is to be done—all those things change from time to time, depending on the type of personnel.

They are not controversial. We did a great deal of that type of work for the Army and the Navy during the war. We had all different kinds of forms of contracts. I don't think the negotiation of any one of them took over five hours apiece, and it was thought that it was better to leave that flexible and handle it as the occasion arose.

Q. 13 is the other one. That is just a contemplated pooling arrangement?

A. I think there our feeling was that it was a very difficult subject to handle, and that we didn't have enough light on the facts and also I think the question of time was involved. We thought if we ever did make such an agreement we would want to spend a good deal of time on it.

Since we were not proposing to make it immediately we didn't want to hold this one up until all those possible future arrangements had been settled.

Q. The next one I guess is paragraph 14, the establishment of the relative contributions in advertising?

A. Those will depend on the particular advertising program that was adopted from time to time, and the amount of emphasis given to services of each company.

We really couldn't do anything about that. We might have settled it—had some very general phrase but it would have been so general that it would not have been much

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[fol. 4303] better than this.

Q. The next one I note was the last sentence of paragraph 17(b). It is not quite the last sentence. It is up toward the top, the last sentence, that paragraph right there (indicating).

A. Paragraph 14(b) deals with the basis of payment by Panagra for maintenance and overhaul performed by Pan American. It would have been possible to prepare an annex dealing with that the same way as we did for the charter hire. It seemed to me that we had gone far enough in establishing a formula that was pretty readily understandable and that the detailed provisions were really matters of accounting which we didn't want to encumber this contract with.

Q. Mr. Friendly, to what extent do you feel that the granting of the domestic routes which are pictured in these exhibits affect the public interest element of the service as proposed here?

A. Well, I would put it this way: we think that this is a great instrument of public service as Pan American's routes now stand. It will become a still greater one when the domestic routes are granted.

Q. It is just a question of degree then in your mind.

A. Yes.

Examiner Wrenn: They have no dependence, one on the other, as far as the approval is concerned.

The Witness: No. Either is advantageous. Each will be more advantageous with the other.

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[fol. 4304] Q. I don't believe it has yet been stated for the record, Mr. Friendly, that Pan American, Inc. is 100 per cent owned by Pan American Corp., is that true?

A. That certainly is true.

Q. Mr. Friendly, how many of the directors of Pan American Corp. are also directors of Pan American, Inc.?

A. Well, they are exactly the same except for the technicality that some, such as myself, have interlocking relationship applications pending and therefore are not as yet able technically to serve on the board of the company to which we were elected later.

Q. Does Pan American Corp. have any interest in any other corporations or carriers?

is

A. Yes. One <sup>a</sup> Panagra. I think that the only other interests which are held directly by Pan American Airways Corporation are the stock interest in Avianca which was described and a 20 per cent interest in the new China National Aviation Corporation.

Q. Does Pan American, Inc. pay any fees to Pan American Corp. for services rendered?

A. No.

Q. Was the agreement between Pan American, Inc. and Panagra presented to the Board of Pan American Corp. for consideration previous to its execution?

A. Well, the Board are the same people, the meetings are usually held at the same time and place, and the two agreements were presented simultaneously and were considered together.

I assume that the resolution shows separate action, but they certainly were considered by both boards.

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[fol. 4305] Q. We have come to that arbitration question now, Mr. Friendly. I was just interested in having the record show who this American Arbitration Society is, whether it is a partnership or corporation, or just a group of people, or just exactly what it is?

A. Subject to correction, I believe it is what is called a membership corporation. It is a non-profit body. I will check on that and if I am wrong I will have the record fixed accordingly. It is a well known body—I should say the most well-known of the various bodies which have interested themselves in the adoption and application of arbitration procedures. It has been designated, I think,

at the instance of the anti-trust division as an arbitral agency in some important matters.

The Board of Directors is made up of men of high reputation and standing. It is a panel of arbitrators likewise. We picked it as an organization of such high reputation that there could simply be no question about it.

Q. To your knowledge, is there anyone connected as an officer or director of Pan American, Inc., Pan American Corp., W. R. Grace, or Panagra, interested in or a participant in any way in this society—that is, as an officer?

A. From a Pan American standpoint, I just can't be positive. Mr. Evan Young in his life time was very active in this and I have an impression that Mr. Bixby has become so in a lesser degree. I can check on that.

Q. Would you supply that later?

A. Certainly.

Mr. Highsaw: Mr. Gesell, could you supply the same information later with respect to Panagra?

Mr. Gesell: Yes.

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[fol. 4306] By Mr. Highsaw:

Q. Do you know whether or not the president of the Society has been consulted as to whether he will undertake to appoint a third arbitrator in a case where it is needed under paragraph 25, Contract A?

A. Not to my knowledge, but that is just what the Association is for, and its rules provide for its acting. I hardly think that would be necessary.

Q. Do you know whether or not any fee will be paid to the Society for the president appointing an arbitrator as provided in paragraph 25?

A. Exhibit No. 30 shows the schedule of fees for holding arbitrations. I don't know whether there is any special fee for just appointing an arbitrator.

Q. There is one other point on the arbitration here I would like for you to clear up, Mr. Friendly. It says the results of the American Arbitration Association having general application. Could you shed a little light on this phrase "having general application"?

A. Yes. We had in mind the set of rules which had been marked as Exhibit No. 30. There are certain special rules that have been formulated from time to time in arbitration in particular trades such as the woolen trade, and our intention was to designate these rules, not some which relate to a particular industry with which we were not concerned.

Q. Would the sanction which would be provided for the decision of this arbitral society something that appears in the laws of the State of New York?

A. Yes. New York has a very effective arbitration law

[fol. 4307] which you will find in the New York statute.

Q. There is just one other point and I think probably this is some information which you could supply later easier. In looking over those rules of the Arbitration Society, it occurred to me that some of them might not be applicable here, such as initiating the proceeding. I would appreciate it if you would look those over and if there are any which do not apply here, let us know in connection with these other questions.

A. I will be glad to.

(Public Counsel)

Q. Is it your understanding of this agreement, Mr. Friendly, that if either Pan American or Panagra desires it, that any question concerning interpretation of any word, phrase or provision of this Agreement A, or any operations under it can be arbitrated in accordance with paragraph 25?

(Mr. Friendly)

A. Yes.

Q. And you have a similar understanding as to the contract which is identified as Exhibit B with respect to the arbitration provisions. I believe it is paragraph 9.

A. I do.

Q. Turning for a moment to this question of subsequent action by the Board with respect to either or both of these agreements: Is it your understanding, Mr. Friendly, that if the Board acts and approves either or both of these agreements, later on the Board may disapprove them if it finds them to be adverse to the public interest?

A. That is what the law says, and I expect that to be done.

Q. Would you consider the Board in any way morally

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[fol. 4308] bound to continue with its approval of either one or both of these agreements in the event of such approval in the event that approval is granted in this proceeding?

A. I don't understand that Government agencies have moral obligations and their legal authority is set forth in Section 412 of the Civil Aeronautics Act.

Q. Strange as it may seem, that point has been raised previously.

A. Well, I may say I wouldn't expect them to turn around the next day and disapprove it, but that is not a moral obligation; that is simply a proper respect for the administrative process, I would say.

Q. Would you have any objection to the amendment of either one of these agreements to reflect the continuing jurisdiction of the Board?

A. No.

Q. Or a condition applied to the approval if that were possible?

A. No. If the Board deems it necessary, it would seem to me not to be, but if they feel it necessary, I would have no objection to it, just what the law says.

Q. Turning to Agreement A, Mr. Friendly: paragraph 2(e) it is. Is it your interpretation of the contract, that this phrase here in the middle of the paragraph 2(e) "to such an extent as Panagra shall determine appropriate from time to time" as modified by the requirements of paragraph 3 with respect to notice of flights?

A. Oh, yes. Paragraph 3 in regard to notice applies to everything, but that is simply a mechanical method so that

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[fol. 4309] Pan American knows a little ahead of time what schedules will be run of the Panagra aircraft so as to be able to make its plans. It is not any limitation on the rights of Panagra except that they have to give some reasonable advance notice, and of course if in a particular instance it were convenient we would be glad to consider waiving it or reducing it.

Q. Mr. Friendly, I believe we have already had some interpretation from the Panagra side of paragraph 2(e).

Could you state your understanding of that provision for the record?

A. It is precisely the same as Mr. Roig's.

Q. Namely, that that was put in there to be intended to prevent Pan American from operating Panagra's planes over other routes of Pan American except under unusual circumstances or emergencies; something like that?

A. Yes. That we could not operate them at all on any other routes without Panagra's consent, and that it doesn't contemplate any such regular operation would be done without formulating a new agreement and bringing it down for approval.

Q. That is what I was trying to get at. There is no thought there that if you wanted to extend some sort of scheduled operations to another point, that you would just start operating a Panagra plane and consider it covered by this agreement?

A. No, there was no thought of it although I can see that the language could have been somewhat better chosen.

Q. Referring to paragraph 10 again. Will you explain for the record why nothing more was done to put more

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[fol. 4310] detailed provisions in the contract? I wonder if Pan American has done anything yet about formulating such plans?

A. Yes, they have, but Mr. Kirkland and Mr. Brock can tell you much more about them than I can.

Q. Referring to paragraph 10 of the agreement: Is it an advantage for Pan American to act as a general sales agent for Panagra under this provision or was this an accommodation or concession by Pan American?

A. Well, I think there are advantages moving in both directions. I think, as I have stated before, that it is of great advantage to Panagra to have the kind of sales representation in the United States that Pan American can give

Panagra

it. That is an advantage to Pan American. It is an advantage to Pan American for one thing, because of Pan American having the interest that it does in Panagra, and because of the connecting service.

By connecting, I mean route connection. Both a through service operated under this agreement, and other schedules which Pan American operates that connect with Panagra. Anything that improves Panagra's business is good for Pan American.

There is also another advantage to Pan American in the shape of the fact that we will be paid a reasonable basis somewhat for this work and it undoubtedly gives us a ~~very much~~ greater volume of sales over which to spread certain costs than we would otherwise have.

I think the point about whether it is a concession or not a concession, is again, that it is for a very long term and that it would not be made certainly with a company in which we were in direct paralleling competition.

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[fol. 4311]. Q. Referring to paragraph 10(b), Mr. Friendly: Is that phrase "evidence reasonably indicating" a matter to be determined by Pan American or can that be arbitrated if Pan American disputes whether or not the evidence is reasonably indicated what is there set forth?

A. I think it could be arbitrated. I would make quite a guarantee that we would settle that in some more expeditious way.

Q. In other words, it is not intended under this agreement that Pan American could flatly refuse to accept the Panagra evidence and that would be the end of it?

A. No, it certainly is not.

Q. If Pan American should continue to refuse to accept it, then it would be covered by the arbitration provisions of the agreement?

A. Correct.

Q. Referring to the phrase "availability of Panagra's services" there in the middle paragraph 10(b), would the operations contemplated under this agreement be one of those services?

A. Let me be clear about that. If all that had happened was that we had not called to the attention of a passenger that he could go to the Canal Zone—that is, a local passenger to the Canal Zone, that he could go on one of these planes as distinguished from some other, I would not think that that came within the language, but of course, if the

subject was a passenger who is going to a point on Panagra's route by these planes, certainly the provision applies to that.

Q. In other words, that provision would only apply to

[fol. 4312] a through passenger south of the Canal Zone?

A. Yes. Traffic in which Panagra has a financial interest.

Q. Will you turn over to paragraph 13, Mr. Friendly?

A. Yes, sir.

Q. Could you explain the advantage of the pooling arrangement from Pan American's point of view? I think we have already had it from Panagra's, but I would like the record to show what Pan American thinks of it.

A. I think the considerations were the same. I really have nothing to add to what Mr. Roig stated.

Q. You adopt all of Mr. Roig's statements?

A. Yes.

Q. Referring to paragraph 13(b), Mr. Friendly, do you at present have anything in mind in the way that that might be accomplished?

A. I think I ought to call Mr. Gesell at this point. That was one of his particular brainchildren and I never could believe it was very important, but he did and so it went in. That is about all I can say on that.

Q. I am frankly just a little stumped.

Mr. Gesell: I can explain it, Mr. Examiner.

Examiner Wrenn: Go ahead, Mr. Gesell.

Mr. Gesell: We felt that if over the period of 99 years, there should be developments in aircraft which made it possible to fly, let us say, nonstop from Lima, Peru, to

(sic)

Balboa, and operating and other conditions traffic-wise, and so forth, made that a desirable thing, that we wished to be free to have a basis for working out that type of flight

[fol. 4313] without having to continue to stop enroute. It is conceivable that that will take place in 99 years, and we were trying to look a little ahead.

Mr. Highsaw: I was wondering whether you think that at present it could legally be done under the Civil Aeronautics Act.

Mr. Gesell: We certainly indicated our doubts about that in the paragraph which sets up all the existing regulations and requirements of the Civil Aeronautics Board, but we assumed that the Board would be people as aggressive as we were and if it became operatively possible, the Board would find some way to work out some way that we could do it.

By Mr. Highsaw:

Q. Do you believe that the traffic flow between Miami and Balboa is at present heavy enough or will be in the immediate future, for Pan American to make money out of this operation?

A. That is a very large question. It depends upon rates and costs and competition, and present and future, and what not. I will say this—perhaps this is the point you are getting at—I think that the arrangements that are provided in this agreement will improve by a good deal Pan American's ability to make money out of that operation.

Q. That agreement?

A. Yes. It will do so, I might add, by stimulating the flow of traffic to Panagra's routes—to points on Panagra's routes in South America which will travel over that sector of Pan American's route.

Q. What I had in mind was not the total sector—that is, the Pan American flights that fly Pan American planes,

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[fol. 4314] but just the operation provided for by this agreement in which Pan American will be flying Panagra planes between Miami and Balboa.

A. Well, as we see it—Mr. Ferguson can go into greater detail on this if you desire—the operation of the Panagra planes will be no more expensive in relation to the type operated, than would the operation of our own planes. If it is going to bring more traffic, therefore, it is going to help us.

Q. In the discussions yesterday, Mr. Roig stated that the agreements that are now before us meet in substance what he regarded as the Board's mandate in Docket 525.

Could you give us your views on that for the record, please?

A. Well, we feel that they do. We feel that what the Board was after was through service between the United States and points on the west coast of South America, and not the particular means by which that was afforded, and that this meets it completely, and in a very satisfactory form.

Q. I understood Mr. Roig to say that this didn't meet it in accordance with the exact letter of the Board's statement, but in effect he thought it met it in spirit; would that be your position?

A. Precisely.

Q. Suppose that Panagra's president insists upon arbitrating something of Pan American's performance under this contract that he might be dissatisfied with: can Pan American avail itself of paragraph 3 of Agreement B to

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[fol. 4315] question that action of the Panagra president in insisting upon such arbitration?

A. Well, I suppose it is like asking "Can a man bring a lawsuit" to which the answer is always "yes".

Literally he can, but I can't imagine that any responsible company would say that the mere fact that someone had made a complaint was a cause for invoking these procedures. I know what my own views would be about such a course of conduct.

Q. You don't feel, then, that Pan American would ever be dissatisfied with Mr. Roig or any other Panagra president merely because he insisted upon arbitrating some provision of one of these agreements?

A. Certainly not.

Q. Is there any understanding, Mr. Friendly, formal or informal or otherwise, between Pan American, Inc. and Panagra, Pan American, Inc. and Grace, Pan American Corporation and Panagra, and Pan American Corp. and Grace, as to permitting Panagra to apply for a route to the United States in the event either one or both of these contracts were disapproved?

A. There is not.

Q. Is there any understanding, formal or otherwise, of any kind, between the same parties as to what will be done to meet the threat of competition which you have depicted in your testimony, in event that either one or both of these contracts were disapproved?

A. No. We are hoping and expecting they will be approved. We haven't had the time or desire to think of what we would do if they are not. At least, I haven't.

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[fol. 4316] Q. Mr. Friendly, in your estimation, is the threat of competition in the areas covered by this operation, so severe as to force Pan American and Panagra to work out some other kind of arrangement if this particular one were disapproved by the Board?

A. Well, you have heard what I said about the competition, and I think it is most important that Panagra and Pan American should be in a position to offer through plane service. Certainly if the Board turned down this agreement and in so doing gave any hope of any other kind of agreement, I would do my level best to work it out, but I really can't say just exactly what I would do under circumstances that haven't arisen and I hope will not arise.

Q. During the negotiations for these agreements, Mr. Friendly, did you ever put forward a straight interchange agreement similar to the United-Western agreement as a basis for an arrangement?

A. If by "these negotiations" you mean as I think you do, the negotiations that began in June of this year—

Q. That is right.

A. —the answer is "no".

Q. One other question, Mr. Friendly. Has any thought been given by Pan American as to what the—

add

A. May I adjust one word?

Q. Certainly.

The — we

A. A reason why it did not is that it was made perfectly clear by us at the meeting of the Panagra board which I initiated, that we would not propose any such type of arrangement. The whole basis on which the negotiations were

[fol. 4317] entered into would have precluded any such suggestion being advanced.

Q. If that had not been the case, would you have advanced such a suggestion, Mr. Friendly?

A. I think if that had not been the case, there wouldn't have been a negotiation.

Mr. Highsaw: I think that is all, Mr. Examiner.

Examiner Wrenn: Anything on redirect?

Mr. Hamilton: No redirect.

Examiner Wrenn: Very well, then. You may be excused. Thank you, sir.

(Witness excused)

Mr. Gesell: Mr. Kirkland?

(Off the record).

Examiner Wrenn: Let's come to order, gentlemen.

#### PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 422

T. J. Kirkland called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gesell:

Q. Mr. Kirkland, what is your position in Panagra?

A. I am the vice-president in charge of operations.

Q. How long have you been employed by Panagra?

A. 15 years last August.

Q. A substantial amount of that time you were in South America and were directly familiar with the operations there, are you not?

A. That is correct.

[fol. 4318] interest in Panagra.

Mr. Schneider: That is all. Thank you, Mr. Roig.

Examiner Wrenn: Are there any other questions of Mr. Roig?

(No response)

Examiner Wrenn: All right. You may be excused.

(Witness excused)\*

Examiner Wrenn: Are there any questions of Mr. Friendly?

Mr. Schneider: I have no questions of Mr. Friendly in the light of that.

Examiner Wrenn: Then is it understood by counsel that Mr. Friendly and Mr. Roig are free to leave if their interests so dictate?

(Off the record)

Examiner Wrenn: Let the record show we will hold that question open until just prior to adjournment for lunch.

Mr. Schneider: Mr. Examiner, I would like to offer in evidence at this time the minutes of the meetings of Board of Directors and Executive Committees of the following corporations: Pan American Airways Corporation; Pan American Airways, Inc.; Pan American-Grace Airways, Inc.; and W. R. Grace and Company; those being the minutes which were requested of counsel for those parties and distributed by counsel.

I assume you have a full set now.

Examiner Wrenn: Yes, I have a full set.

(Off the record)

Examiner Wrenn: Is there objection to the receipt in evidence of the tender that Mr. Schneider has made, which

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[fol. 4319] C. Lounsbury", which I would like to have marked for identification.

Examiner Wrenn: All right. That will be marked for identification as PAA Exhibit No. 35.

(Document above referred to was marked PAA Exhibit No. 35, for identification)

Mr. Hamilton: I would like the record to show one correction in Line 13. For the phrase "his present", the word "the" should be substituted.

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 423

Examiner Wrenn: Proceed.

Direct examination.

By Mr. Hamilton:

Q. Mr. Lounsbury, does Pan American-Panagra Exhibit No. 35 correctly state your qualifications and experience?

A. Yes, sir.

Q. Mr. Lounsbury, are you sponsoring Pan American-Panagra Exhibits

Pan American Nos. 6, 11, 12, 13, 14, 15 and 24?

A. That is correct.

Q. I would like to direct your attention to Exhibit No. 24, please. Does that exhibit refer both to offices maintained directly by Pan American and sales offices maintained by agents of Pan American?

A. Yes, that is correct. Out of this total number of cities and offices there are 10 sales offices which are Pan American offices, and the others are agents.

Q. Would you name the 10 cities in which the Pan American sales offices are located?

A. Los Angeles; San Francisco; Washington, D. C.; Miami; Chicago; New Orleans; Boston; New York and there is one at Laredo which is not shown on here; and at Seattle.

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[fol. 4320] Q. Did you hear testimony of Mr. De Groot as to the advantages that the through flight service contemplated by the contract would have over the existing connecting arrangements?

A. Yes, sir. I did. I think he described the advantages very well. The public would thereby have a through one-plane service which would eliminate the necessity of deplaning at Balboa, and that would be of special advantage in the operation of sleeper planes because it would be very

inconvenient for passengers to disembark at Balboa and get on again in the middle of the night; also, in connection with the problem Mr. De Groot described of delayed planes causing missed connections, I think there is one point that he might also have emphasized (namely, that any businessman in the higher salaried brackets, of which there are many traveling in Latin America, loses considerable time when delays are caused because of missed connections, and that in addition to the actual outlay of 20 dollars a day is something of considerable importance to a great many of the traveling public).

Q. So as I understand it, you concur in his statement of the disadvantages and add in the loss of time factor?

A. That is correct.

Q. Mr. Lounsbury, what difference will there be, if any, in the ticketing procedures, with reference to Miami and points on Panagra's route after the contract is approved?

A. There would be no difference in the procedures under the contract as compared to the present ticketing procedures.

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[fol. 4321] Q. Mr. Lounsbury, in your opinion, are the reservation control procedures provided for in the contract feasible?

A. Yes, I think they are quite feasible, and the reservation control would be considerably simplified, especially in view of the fact that the problem of missed connections would be eliminated, and that in itself—when that occurs, rather—reservation control becomes particularly complicated.

Q. Would you care to elaborate on how reservation control procedures become complicated when a connection is missed?

A. When a connection is missed, the passengers who were intended for the onward carrier's planes have to be cancelled out, the charts have to be changed at the terminal points as well as any central control point, which means numerous radio messages back and forth, and then of course if there are other passengers who perhaps can be booked at the last minute, those have to be added to the charts, the control charts for the plane, and each onward destination advised so that all in all it becomes a rather

complicated problem and one that has to be handled within a very short period of time.

Q. What advantages, if any, will accrue to Pan American, from the traffic point of view, by virtue of the through flight service provided for by the contract?

A. I think this can be compared to the advantages that would accrue to any business concern from improvement of its service. I think it is quite usual that improvement of

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[fol. 4322] product means increased sales.

Q. With reference to the present practice as to publishing of Pan American tariffs; would there be any change in that practice as a result of the arrangements contemplated by this contract?

A. No. There would be no change necessary.

Q. Now, with reference to the procedures relating to joint rates, would this contract cause any change in those procedures?

A. No, sir. There would be no change necessary in that either.

Q. In so far as traffic matters are concerned, Mr. Lounsbury, is Pan American now prepared to undertake the operations covered by the contract?

A. Yes, sir. We would be prepared to undertake them immediately. The only time required would be that necessary to file schedules within the 10-day period required by the Civil Aeronautics Act.

Mr. Hamilton: I think that is all, Mr. Examiner.

Examiner Wrenn: Mr. Gesell, do you have any questions of Mr. Lounsbury?

Mr. Gesell: No.

Examiner Wrenn: Mr. Schneider isn't present.

Mr. Harlan, do you have any questions?

Mr. Harlan: Yes, I have two questions.

Cross examination.

By Mr. Harlan:

Q. Mr. Lounsbury, isn't it true that Pan American has for a number of years provided preferential accommoda-

[fol. 4323] tions for Panagra's traffic with respect to the Miami and Balboa segment?

A. What do you mean, sir, by "preferential accommodations"?

Q. I really mean that you have provided preferential reservations for those passengers.

A. If you mean that we have maintained a through seat allotment of a certain number of seats, that is correct.

Q. That has been true and is true now, isn't that right? I mean that has been true for several years and is true at the present time.

A. That is correct.

Q. With respect to these various sales offices shown on Exhibit 24, do these offices presently sell transportation over Panagra?

A. Yes, sir, they do.

Q. Could you tell us how many of these are Pan American's own offices and how many are traffic agencies?

A. I think I read that—

Mr. Hamilton: Mr. Examiner, I believe he testified on that—covered it on direct examination.

(Off the record)

Mr. Harlan: I will withdraw the question.

By Mr. Harlan:

Q. Mr. Lounsbury, with respect to points which are where you have a travel agency, could you explain, just in general, how you choose the agency?

A. How we choose the agency?

Q. Yes.

[fol. 4324] A. Yes. In the first place, the agency is required to be an established travel bureau, and also we choose the agencies whom we think will produce the most business for us and Pan American Grace. We have a method of testing that out which other airlines also use, which seems to be quite effective. The result has been that we have built up the number of active agencies which you see listed here in Exhibit 24.

Q. In most instances do you initiate the negotiations with the travel agency or is it the other way around?

A. Well, it depends largely on circumstances.

Recently, since the war, many agents have been coming back into business that were in business before the war and had closed, and sometimes they come to us and advise us that they are ready to open again, and in other cases we have noticed it through other means, and have solicited their business.

I might say that we have actively at all times a very active solicitation campaign going on among all these agents to be sure that they are adequately serviced with information about Pan American and Pan American-Grace services.

Q. Just as an illustration of this—and this is all I have on the point—I notice that there is only one city in New Mexico where you have such an agency and that is the city of Taos. I would assume that you didn't choose that one city as the best city in New Mexico for Pan American to have an agency in, is that correct?

A. Well, there are other cities in New Mexico such as

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[fol. 4325] Albuquerque and Santa Fe who might have agents at the present time. They might not be active enough for us to have taken on the servicing of them.

Mr. Harlan: That is all.

Examiner Wren: Does the Department of Justice have any questions?

Mr. McFarlane: No, sir.

Examiner Wren: Public Counsel?

Mr. Highsaw: Yes.

Cross examination.

By Mr. Highsaw:

Q. Mr. Lounsbury, I believe we have a little bit of unfinished business from Mr. DeGroot with reference to these load factors on this operation between Miami and Balboa. Could you give the anticipated load factors in the immediate future for this operation, both southbound from Miami to Balboa and northbound from Balboa to Miami?

A. I am afraid I would not want to predict any exact load factor in percentages, because I don't think anybody is capable of doing that with any accuracy, but I do think from recent experience, and experience in the past when service has been improved, that the traffic carried, and the load factors resulting therefrom, thereby substantially increased.

Q. That is, over the figures shown in Exhibit No. 71.

A. Yes, sir.

Q. That is as close as you would care to come to a statement on it?

A. Yes. I simply think that the improvement in service

[fol. 4326] and the additional frequency of service as contemplated in some of these exhibits on schedules, will in themselves generate more business.

I think we also should realize from these exhibits that have been shown here, that the service during some of this period at least, has not been adequate to supply the demand. Mr. De Groot mentioned that, and if the service had been more adequate which we were both unable to make it, because of the lack of aircraft, the total figures here would be higher than they are.

Q. In advising Pan American on this contract, is that all the advice you gave them, just that general statement as to what you thought the traffic would be there?

A. We arrived at a judgment estimate in the form of numbers of schedules. We did not attempt to estimate exactly the number of passengers that we probably would carry, because we believe in the idea of making the service fit the demand.

If there is more demand than there is service now that we are able to get more aircraft, we will put more service on.

Q. I would like the record to be fairly clear on this matter of Pan American acting as tariff publishing agent of Panagra. As I understand it, there is an agency or power of agency on file with the Civil Aeronautics Board whereby you act as Panagra's agent for filing tariffs?

A. That is correct. There is a power of attorney on file appointing me for the filing of passenger tariffs, and

another one appointing another man, Mr. Chodor, for the

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fol. 4327 handling of express tariff or cargo tariffs.

Q. Of course, on through rates it is necessary for you to get together in accordance with the Act to decide upon a joint rate?

A. That is correct.

Q. Where Panagra submits a rate only for its own route or own operation, that is not a joint rate as ~~but~~ any discussion with Pan American or with you about that is ~~not~~ part submitted, or is that made independently by them?

A. The fundamental rate level is made up entirely by Panagra, and they send it to me for publication.

Sometimes, since we have the ~~job~~ of doing the rates, compiling at Panagra's direction, there are certain minor adjustments that have to be made as in the case in making any tariff before it could be published, and those adjustments are frequently suggested by a non-Panagra supervisor. They are not passed on without their approval.

That is only a mechanical process, however, Mr. Higgin saw.

Q. Other than these minor adjustments you have just mentioned, you have never made any suggestions to Panagra as to any change in any rate, rule or regulation that they have submitted to you to publish under the agency power?

A. All I can say is that if I notice something that occurred to me as possibly an impractical rate between a certain set of points, I might suggest to them that they reconsider it, but I certainly have no control over the decision.

Q. I take it that you have never refused to publish a rate or a rule or regulation which they have submitted to

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fol. 4328 you?

A. That is correct. I have never refused to publish anything. That is not my job.

Q. Mr. Lomax, have you done anything looking toward the establishment of a similar rate to B.A. by the west coast and the east coast in the event that the contract is approved?

Mr. Gesell: I don't understand that, Mr. Examiner.

The Witness: I don't either, quite, I am sorry.

Mr. Gesell: What is the question?

Mr. Highsaw: I will try to explain it. What I am trying to get at is this: Is there any thought on Pan American's or Panagra's part that if this contract is approved and there are two services, one running down the east coast and one running down the west coast, that you will have the same rate to Montevideo and B.A. which are the two common points, irrespective of this pooling arrangement that is talked about?

A. Well, there hasn't been any discussion of this in connection with the contract. The fact is now, and has been for a long time, that the rates to those two common points are the same, and that is quite common practice as I think you will realize, between many carriers.

Between New York and Chicago, for example, there are something like 25 or 26 different routings via different air lines, different combinations of airlines, where the rate is exactly the same.

That condition has obtained between Miami and Buenos Aires and Montevideo for a good many years. I have no idea what may happen in the future, but it is a very practical situation.

Mr. Highsaw: I have nothing further.

Examiner Wren: Any redirect?

Mr. Hamilton: No, sir.

Examiner Wren: You may be excused.

(Witness excused)

(Off the record)

Examiner Wren: Let the record show that the off-the-record discussion pertained to, first, the question of schedule of future witnesses and the time that will probably be consumed, and, secondly, the representative of the Department of Justice stated that he had no further questions of Mr. Friendly.

I think that will clear up the state of the record that was left a while ago when the Examiner stated that the ques-

tion of whether Mr. Friendly would be released would be kept open until we adjourned for lunch.

We will recess until 2 o'clock.

(Whereupon, at 12:30 o'clock p. m., hearing in above-entitled matter adjourned, to reconvene at 2 o'clock p. m., same day).

[fol. 4330]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 424

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

ADDITIONAL TESTIMONY OF JUAN T. TRIPPE IN  
CAB DOCKET 779 WHICH PAN AMERICAN  
INTENDS TO OFFER IN EVIDENCE

pp. 1567-1579:

By Mr. Friendly:

Q. Shortly after Pan American-Grace Airways was organized, did any question arise as to its management?

A. Yes. The question arose as to the choice of a president of the company and who should be in charge of its operations.

Q. Will you tell us what the question was?

A. Pan American had understood that since the agreement provided that it should have charge of the joint com-

panies' operation, it should designate the president. Grace had carried out this understanding in the case of Peruvian Airways Corporation but Grace now refused to do so in the case of Pan American. Grace and an impasse developed.

Q. What did Pan American do about this?

A. We asked Mr. Hoit to attempt to straighten out the matter in line with the agreement.

Q. Do you know what he did?

A. I only know the result.

Q. And what was that?

A. No one was elected president at the time and Mr. MacGregor was elected vice president and general manager. [fol. 4331] Q. Will you tell us who Mr. MacGregor was, please?

A. Mr. MacGregor was an employee of the Atlantic Gulf and West Indies Steamship Company.

In the spring of 1928 an American had arranged to obtain a loan of his services from the AGWI—that is the Atlantic Gulf and West Indies Steamship Company—and he had been in Central America negotiating various concessions for us.

I should say in this connection also that Mr. Hoit was an official and an important stockholder in the AGWI Steamship Company.

Q. Did Pan American consider that the election of Mr. MacGregor was a solution of the management problem?

A. We did not feel that it was a sound arrangement or in accordance with our contract. The matter kept coming up from time to time.

Q. Will you tell us what your recollection is?

A. The matter of placing a Pan American nominee in responsible charge of the operations of the company continued to come up. Pan American considered that Grace was constantly interfering in the management, including attempts to edit instructions sent to the field by the company's head office here. The company's business, in our opinion, was not being conducted as efficiently as elsewhere on the system. We did propose to Grace that an arrangement whereby we be permitted to buy out their interest be discussed, but we got nowhere.

Q. Were there then further discussions between you and W. R. Grace & Company as to the management of Pan American-Grace Airways?

A. Yes.

Q. Will you tell us what they were? By the way, these discussions were primarily with Mr. Roig, were they not? [fol. 4332] A. That is correct.

Q. Now, tell us what they were.

A. Grace suggested that Pan American be given the presidency of the joint company, their nominee, Mr. Roig, serving as chairman of the Board, also that an executive committee to consist of the chairman and president be appointed.

The Grace Houses were to continue to serve as general agents in charge of Governmental negotiations, traffic solicitation, and general business problems of the company as well.

However, the Grace Houses, as agents, were not to report to the executive department of Pan American Grace Airways but directly to Mr. Roig.

Q. Did Pan American consider that to be a sound and workable arrangement?

A. No, we did not; and we so advised Mr. Roig.

Q. Were these discussions in the spring of 1930, Mr. Tripp?

A. Yes, they were. At the time of the meeting referred to in the minutes of the Grace Board, which we have just discussed.

Q. That is, then, either the winter or the end, or the spring of 1930?

A. That is correct.

Q. They continued over some period of time?

A. They did for several months.

Q. Now, what reasons did you give in your discussions with Mr. Roig as to why you did not consider this proposal to be sound and workable?

A. We stated that we felt that a chief executive of a company should be in responsible charge to the executive committee and Board for the operations of the company.

and, in our opinion, the company could not function successfully with a two-man head working from entirely different offices.

[fol. 4333] Q. Do you recall this meeting of March 17, 1930?

A. Yes, I do. I don't recall any details, but remember the subject and also remember that we were always supporting the Pan American-Grace management in trying to get more flight equipment on the line, better hotel accommodations on the ground, and larger equipment and improved facilities generally, and that the Grace directors were many times on the other side of the fence.

Q. Do the minutes of the meetings of the Board of Directors of Pan American-Grace Airways set forth all of the discussions which took place at those meetings?

A. The one which I have looked over in the past few weeks certainly do not. They appear to be confined to matters on which some decision was reached.

Q. Who keeps the minutes of Pan American-Grace meetings?

A. The secretary of the company, Mr. Cogswell.

Q. Has he been the secretary from the outset?

A. That is correct.

Q. Were there other controversies in regard to flight equipment in these early years?

A. Yes. Pan American believed that all operation should be conducted by multi-engine planes, as they were on other Pan American trunk line operations.

Q. Did the Grace directors oppose this?

A. Yes. They wanted to continue running the single-engine planes in the Argentine until they were worn out.

Q. Did they wish to carry passengers in them?

A. Yes.

Q. Did the management of Pan American-Grace make any request of the directors as to the procurement of radio?

A. Yes. Actually the first order for radio equipment was placed with Pan American in the fall of 1929, by Mr. [fol. 4334] Jacobs, the former employee of Grace who had become an employee of Pan American-Grace.

However, the Grace directors insisted that this order be countermanded. From the very early days, Mr. MacGregor and Colonel Harris were constantly urging the installation of radio, and the Pan American directors were as constantly supporting them.

Q. What was the attitude of the Grace directors?

A. There was one objection after another. These are all set forth in the exhibits. I don't remember all the details, but the correspondence is set forth in the minutes.

Q. What was the result of the attitude taken by the Grace directors?

A. The result was that Pan American-Grace did not have radio, not only in 1929, but throughout 1930, and well into 1931.

Q. What did Pan American do about this?

A. By March, 1931, Pan American felt that the operation of single-engine airplanes, the lack of radio, and the lack of proper passenger stations on Pan American-Grace route were threatening the good name which we had been building up during the past three and a half years over the rest of the Pan American Airways System. I have had the figures looked up and find that at the end of 1930 the average investment in ground facilities per mile of route was \$12.57 on Pan American-Grace as against \$213 per mile on the other international routes of the system in Latin America.

Q. Will you proceed, Mr. Trippe?

A. While we continued to try to avoid open controversy with our Grace partners, we felt that we would be delinquent in our duty if we kept silent.

The result was the protest which was presented at the meeting of the Board of Directors of the joint company on March 18, 1931.

[fol. 4335] Q. Did the making of this formal protest by Pan American lead to any improvement in the equipment or facilities of Pan American-Grace?

A. It led to some improvement. Arrangements, as desired by the management for the installation of radio, were finally made, and in the summer of 1931 the Grace directors

accepted the management's recommendation for the purchase of two more Fords, but only on condition that the single engine equipment should be used as spares until all remaining mileage had been gotten out of it, and that Pan American should not even make a request of the Grace directors for the purchase of additional multi-engine equipment until this had been accomplished.

Q. There has been some reference to the fact that Pan American's original proposal for radio did not contemplate the sale of radio equipment, but the operation of radio by its own personnel. Can you explain why that was done?

A. Well, first, we had a very serious patent problem. We had developed these sets largely ourselves, and while the Radio Corporation of America was making no objection to our using them on our own operations, they did not look with favor on our selling them. It was not until May, 1931, that we had any formal agreement with the Radio Corporation.

Q. Is the agreement which appears on page 42 and, following of Exhibit P-36-A the one to which you have reference?

A. Yes. And I might add here that the negotiations of this agreement was a most difficult task involving many months and numerous conferences with the Radio Corporation officials in some of which I participated. Another and broader agreement was negotiated some years later.

Q. Were there any other reasons for Pan American's making the proposal which it did?

A. I do not know whether this also would qualify as a reason, but we certainly did feel that for us to operate (fol. 336) Pan American-Grace's radio under a contract such as we proposed was entirely consistent with our agreement with Grace.

Q. Was Pan American able to make any progress at this time on the provision of suitable passenger facilities for Pan American-Grace?

A. Not at this time or for a long while afterward.

Q. Will you please summarize for us what the situation as to the management of Pan American-Grace Airways was in 1931 and 1932?

A. Mr. MacGregor, as general manager of the company, and Colonel Harris were doing the best that they could; but the Grace directors, instead of confining themselves to major items of policy, were interfering in details concerning the day to day operation.

pp. 1587-1597:

Q. After the inauguration of service with the S-42s on the transCaribbean route, was Pan American willing at all times to operate the trips to the Canal without a stop at Barranquilla if the Post Office Department had been willing so to designate them?

A. Yes, and we made numerous efforts to get them to do so.

Q. Has your connecting service between Miami and the Canal Zone been affected by the service operated by Pan American-Grace south of the Canal?

A. Definitely, from the very beginning.

Q. Has that sector of Pan American-Grace's route immediately south of the Canal been what is called a bottleneck?

A. Yes, it has.

Q. Would you explain, please, what you mean by that word?

A. I think the word is used in various senses.

A. (continuing) —but the conditions on the northern sector of Pan American-Grace's route qualify it, in my opinion, [fol. 4337] for all of them.

In the first place this was a sector of the route which had to carry all of the through traffic in addition to traffic that was local to the sector.

In the second place it involved at least at the onset, and for years thereafter, the longest nonstop flight made by Pan American-Grace:

The distance of 442 miles between Cristobal and Buena-aventura, compared with the distance of 499 miles between Kingston and Barranquilla, and later of 631 miles between Kingston and Cristobal which Pan American was flying on its transCaribbean service with much larger equipment.

In the third place the aircraft operated over this sector have always been too small, in my opinion, for the job, and have had to be operated with restricted loads.

Q. When you use the word "bottleneck" in regard to this sector, you are using it in the various senses that you have just described?

A. I am.

Q. Has Pan American made efforts from at least 1932 on to eliminate the bottleneck on the route of Pan American-Grace immediately south of the Canal?

A. Yes, it has.

Q. And how would the elimination of that bottleneck have affected Pan American-Grace's business?

A. The elimination of the bottleneck would have permitted the development of considerably more through traffic between the United States and Ecuador, Peru, Chile, Bolivia, and the Argentine.

Q. Why was the elimination of this bottleneck a matter of concern to Pan American?

[fol. 4338] A. For various reasons. In the first place, our company's interest as a stockholder, in building up the business of Pan American-Grace. Second, our interest as a connecting carrier in building up a bigger outlet for our two services to the Canal. And third, our general interest as an airline connecting the United States with Latin America and building up in every possible way commercial traffic so that we could carry on at the earliest opportunity without subsidy.

Q. Pan American emphasis to the management of Pan American-Grace the desirability of securing flying equipment that would lead to Pan American-Grace's becoming independent of subsidy?

A. Yes, this was always Pan American's policy, and we discussed it frequently with the Pan American-Grace management.

Q. When you speak of Pan American-Grace management in this period, you refer primarily to Mr. MacGregor, do you not?

A. That is correct.

Q. Do you recall talks with the management of Pan American-Grace as to the desirability of its securing flying equipment for the bottleneck that would give it greater carrying capacity there?

A. Yes. We discussed this repeatedly.

Q. After the delivery to Pan American of the four-engine S-40's, which appears from the exhibits to have been in 1931, did Pan American go to work with aircraft manufacturers on the development of new and larger types of four-engine aircraft?

A. Yes, we did, in 1932, and out of that work there came the four-engine flying boats eventually known as the Sikorsky S-42 and Martin 130 series.

Q. Did you at about this time take up with the management of Pan American-Grace the desirability of its operating S-42's on the sector immediately south of the Canal?

A. Yes, we did.

Q. Do you recall when you first did this?

[fol. 4339] A. Only that it was while our discussions with the manufacturers were still proceeding, and, therefore, it must have been in 1932.

Q. With whom were those discussions had?

A. Initially with Mr. MacGregor.

Q. Were you able to give Mr. MacGregor detailed performance figures on the S-42?

A. Not at the time of my first conversation with him on this subject.

Q. Why was that?

A. The detail performance figures were not available inasmuch as Pan American's engineers were still working with the manufacturers. The actual procurement contract was not let for some months thereafter.

Q. Was it Pan American's position in 1932 that Pan American-Grace should acquire a new type of four-engine flying boat for use on the sector immediately south of the Canal?

A. Yes, it definitely was.

Q. Did Pan American later give to Pan American-Grace performance figures on the S-42?

A. Yes, we did. Some time early in 1933, and after the procurement contracts had been completed.

Q. Those figures, of course, were not based on actual performance, were they?

A. No, they were based on the manufacturer's specifications since the airplanes themselves were not flown for over a year thereafter.

Q. Can you tell us generally in regard to the performance of the S-42?

A. The S-42 was an outstanding transport, far ahead of its time. At the manufacturer's trials 12 world's records for flight performance were recovered for the United [fol. 4340] States. This high speed clipper had accommodations for some 30 passengers, a high degree of luxury was provided in comparison with other aircraft of that period, including both the DC-2 land transport and the S-43, amphibian or flying boat type. In carrying capacity over medium ranges, this aircraft was outstanding. It carried a 5-man flight crew, including an engineer and radio operator. The safety standards were also greatly improved over previous types, through provision of a number of separate watertight bulkheads, unique at that time in marine transport construction.

Q. Was the S-42 type later put into successful operation by Pan American in Latin America?

A. Yes, it was. On the east coast as well as the trans-Caribbean services.

Q. Let us come back to the bottleneck on Pan American-Grace's route, and will you tell us, please, what the situation was in 1933.

A. By 1933 the S-38 was a year older, and their inadequacy for operation on the northern sector of Pan American-Grace's route was even more apparent than a year before. We felt that on this bottleneck of the trunk line down the west coast, Pan American-Grace should acquire equipment of a capacity that would permit it to handle the trans-Caribbean traffic which Pan American could be in a position to offer with the bigger and faster equipment it had on order.

Q. I would like you to look at Exhibits G-53 and G-54.

Do you recall any discussions that you had with Mr. Roig around the date of these letters?

A. Yes, I do.

Q. Tell us what they were, please.

A. The Grace directors were in favor of a more modern twin-engine amphibian to replace the S-38, whereas we wanted Pan American-Grace to operate the four engine S-42's.

[fol. 4341] Q. Was it Pan American's proposal that Pan American-Grace should purchase an S-42 or should charter an S-42?

A. Pan American was willing to agree to any equitable form of arrangement agreeable to the Grace directors. We were willing that Pan American-Grace should purchase an S-42; we were willing to charter an S-42 to them to operate with their own personnel; we were willing to run an S-42 through from Miami to Guayaquil with our flight crews, Pan American-Grace paying the ratable share of the cost.

Q. Did Pan American insist that S-42's which might be operated by Pan American-Grace over the bottleneck should be operated for Pan American-Grace by Pan American or by Pan American flight crews?

A. No, it did not. We were interested in getting a ship of sufficient size in operation on this sector to cut out the bottleneck. If the most efficient and economical arrangement would have been to have the S-42's operated by Pan American flight crews at the start, we saw no reason why this should not be done, but if there was objection to this, we were quite willing to agree to any other form of arrangement that would have put this fine equipment in use and overcome the bottleneck. The discussions never proceeded to this stage because the Grace directors would not agree to equipment of this size. The question of the method of operation became academic.

Q. Is it correct, then, that throughout 1933 Pan American was unable to secure any action on a proposal that Pan American-Grace should make arrangements for either the purchase or charter of S-42's?

A. That is correct.

[fol. 4342] pp. 1700-1701:

Q. Reference has been made, Mr. Trippe, to a conference held with the Civil Aeronautics Board on October 28, 1942, and to Grace's letter to the Board of that date, which is Exhibit G-75. Would you tell us, please, the rea-

sons why Pan American was unwilling to agree to the proposal of an odd director except with the limitations that are referred to in the letter of Grace's?

A: Yes, it appeared to us that without these limitations this 9th director would simply be an arbitrator of the entire controversy with respect to the extension north of the Canal. I heard Mr. Roig testify the other day that this odd director would in effect act as an arbitrator. In 1939 we had made an agreement with W. R. Grace & Company which we considered had reaffirmed the original understanding as to the territorial scope of the company's operations and it provided for enlarging that scope as to include an extension to the United States in the event that a particular issue with respect to our connecting service was decided by arbitration against us. We felt that if there was to be arbitration, it should be under this supplementary agreement—

Q. (Interposing) Under this what?

A. Supplementary or settlement agreement.

(Continuing) —which the two companies had made in 1939 and which Grace in our opinion, had walked out on. We saw no reason why Grace should now be permitted to have a separate arbitration on the issue of territorial scope which we considered to have been one of the points settled once and for all in 1939.

Q. Did Pan American agree to the appointment of a ninth director who would have power to break any deadlock on any questions arising in connection with operations of the company that fell within what Pan American considered its territorial scope?

A. Yes, we did.

[fol. 4343] Q. Was Pan American willing in the event that such a ninth director were appointed to proceed to arbitration with Grace under the 1939 agreement?

A. Yes, we were, and have been at all times since, and are today.

pp. 1709-1710:

Q. Have you any other comments to make upon the subject of the connecting service between Miami and the Canal Zone, as it bears upon this controversy?

A. I would like to say this: There have, of course, been instances since the beginning\* of the national emergency when we have not been able to provide transportation between Miami and the Canal Zone for passengers destined to points on the Pan American-Grace route, particularly those not holding priorities.

There have also been many occasions when Pan American-Grace has not been able to handle passengers to whom we have provided or could have provided transportation to and from the Canal.

There have been times during this period of emergency when the congestion on our lines to the Canal may have been slightly greater than on the sector to the south. Right now the situation is reversed.

pp. 1723-1726:

Q. Will you tell us now how this general program applies to the service between Miami and the Canal?

A. The Miami-Canal-Zone link to the west coast of South America is one of our most important routes, and would of course be flown by the most modern equipment, attracting increased traffic not only by more comfortable and speedier aircraft, but by lower fares and higher frequencies.

We still favor the through operation of equipment to suitable point or points on the route of Pan American-Grace under equitable arrangements for the interchange of equipment.

Q. Do you believe it is practicable to work out an interchange arrangement that would relieve the present bottleneck between the Canal Zone and Guayaquil?

A. Yes. An interchange program could be put into effect as soon as the Pan American-Grace pilots could be checked out so that they could operate four-engine land equipment.

Q. How could this be done?

A. A reciprocal interchange agreement between Pan American and Pan American-Grace could be concluded with a provision that would permit Pan American-Grace to utilize Pan American Boeing 307s over the Canal-Zone-Guayaquil bottleneck until such time as Pan American-Grace is able to obtain additional four-engine equipment.

Q. In what ways would this be helpful to Pan American-Grace?

A. The traffic congestion south of the Canal Zone would be reduced and the availability of this additional equipment on this sector of the route would help the entire west coast service.

Also it would give Pan American-Grace pilots a chance to acquire experience in the operation of four-engine land planes before the time when Pan American-Grace obtains its own four-engine equipment.

Q. Do you think it would also be practicable to have three way interchange agreements whereby aircraft would be operated directly over Eastern Airlines from, say, New York and Chicago through Miami and Canal to points on the west coast?

A. Yes. I think that would be entirely practicable and should be considered when the respective carriers have acquired suitable equipment.

Q. Would you state what efforts Pan American has made to increase the frequency and the service offered by Pan American-Grace?

[fol. 4345] As our efforts began with the very early days, Our very first estimate was on the basis of three trips a week with multi-engine equipment, as against Grace's proposal of one trip a week with single engine equipment. After Grace had exercised its option to take up its full 50 percent interest in the west coast route, we pressed for the installation of passenger service on all parts of the route, and that all such operations should be flown with multi engine equipment.

We urged that more adequate hotel facilities be provided, suggesting arrangements similar to those we had made on the east coast of South America to improve hotel accommodations at overnight stops for our passengers.

We repeatedly urged the Post Office Department to provide for increased frequencies on Pan American-Grace's route as well as elsewhere on the Pan American system.

After the Civil Aeronautics Act was passed we again pressed for a program of increasing the frequency over two trips per week on both coasts.

We had numerous talks with the Civil Aeronautics Board and with the Post Office Department in an effort to convince them that the Post Office Department had authority to increase these services without the delay inherent in waiting for the Civil Aeronautics Board to fix new rates under the Act.

pp. 1731-1740;

Q. What other specific benefits has Pan American Grace received as a result of its affiliation with the Pan American Airways System?

A. These benefits are too numerous to mention here except in most general terms, with a few illustrations. In dollars and cents, the most direct benefit has come from Pan American's traffic and sales organization. There are literally hundreds of travel and tourist agencies throughout the United States that act under Pan American's supervision as sales representatives for the Pan American Airways System. These arrangements have been developed by years of effort; these agencies are serviced by a well organized system of district traffic offices, located in the largest travel markets in the country.

The sales organization has given Pan American Grace equal representation with every other part of the Pan American Airways System and in our judgment deserves a considerable portion of the credit for the financial success of Pan American Grace's operations. If had Pan American Grace been an independent airline, it could not have had a sales representation anything like what it has received.

I don't see how, for example, its schedules, routes, and tariffs could have been better publicized than through their inclusion in the Pan American System timetables of which over 600,000 have gone out annually for many years, first on a quarterly basis and later on a monthly basis. I will not stop to dwell on the numerous efforts that Pan American's traffic department has made over a long period of

time to foster the development of South American air travel, by Around South American tours and the like.

I would, however, like to list some of the techniques and procedures which have been originated by Pan American Airways and passed on to Pan American-Grace as an to Pan American-Grace as an integral part of the system. They include the development of the combination ticket and exchange order which makes it possible to route traffic between South America and points on the 18 domestic airlines in the United States in addition to points on connecting railroad and steamship lines; the years of work and effort that have been put into the development of its ticket and ticket contract which afforded the maximum protection to which the international air carriers are en- [fol. 4347] titled under the governing international conventions; the development of the valuable business in credit sales under Pan American's credit and transportation contracts; the origination and development of a most successful reservation code which now forms the basis of the American Air Traffic Conference Code and the establishment of the area reservations control system. All these Pan American-Grace has taken full advantage of and properly so.

It has had like benefits from Pan American's work in the field of express traffic. The contract entered into between Pan American and the Railway Express Agency has made available to Pan American-Grace the 23,000 offices of that organization for the promotion and sale of air express. Likewise Pan American-Grace has enjoyed the result of Pan American's work in the development of the techniques of handling express traffic. The through airway bill, which represented nearly two years of research and development, and which in a single document handles all the matters which normally require numerous consular and shipping documents for other forms of transportation, is the finest example of the work that the Pan American System has done in this field. This international air express system was installed on the Pan American-Grace route by one of our senior express officials, familiar with all its ramifications. Reference should also be made to

the fact that the experience which Pan American's traffic department has amassed in the handling of passenger and express traffic is reflected in the passenger and express traffic manuals which the system has created and which Pan American-Grace now uses.

Pan American's airmail specialist was largely instrumental in organizing all arrangements relating to international mail traffic in the west coast countries served by Pan American-Grace and in integrating Pan American-Grace's air mail service from these countries with the whole complicated structure of international airmail, which is coordinated through the Berne Bureau in Switzerland. [fol. 4348] In short, all the various steps which we have taken to develop passenger, express, and mail traffic have redounded greatly to the benefit of Pan American-Grace.

(Discussion had off the record.)

By Mr. Friendly:

Q. Will you also briefly summarize and illustrate the benefits which Pan American-Grace has derived from its affiliation with the Pan American Airways System in the technical field such as operations and maintenance?

A. From the very outset the operations of Pan American Airways have served as a practical clinic in the development of international air transportation. Not only has this been so—

Mr. Cahill: I am awfully sorry and I do apologize, but will you give me that question, please?

(The question was read by the reporter.)

A. (Continuing) Not only has this been so with respect to the art of aircraft operation itself, but it has been equally true in matters such as maintenance procedures, the development of pilot training techniques, including pioneering in blind flying, the development of training programs for maintenance personnel, and the development and application of radio and meteorology to international aviation, plus many other technical matters too numerous to mention.

That, alone, however, is only half of the story, for, in addition to being an aviation clinic, the system also has been the foremost aviation research laboratory in the air transport industry. We believe, with considerable pride, that through its engineers, Pan American has had much to do with such improvements as the increase in horsepower output of engines, the lowering of fuel consumption, the development of more efficient propellers, the elimination of fire hazards in aircraft and the improvement in aviation fuel and lubricating oils. From all of these research projects Pan American-Grace has benefitted.

[fol. 4349] I have given a general outline of the various technical fields in which Pan American has been able to afford Pan American-Grace the benefits of its experience and research. I would like to mention, however, a few specific instances of this nature.

They have, of course, occurred from the very time of the organization of the joint west coast operation. When eventually radio facilities were installed on the Pan American-Grace line a good part of the equipment was developed and manufactured by Pan American Airways and with it went trained system radio operators. The system brought to Pan American-Grace the desirability of establishing our procedure for the collection of weather information and we furnished them with their first meteorologist. Afterward, when we had satisfied Pan American-Grace as to the desirability of employing a weather forecaster, he likewise was furnished from our staff.

We developed in connection with the manufacturers the first streamlined loop direction finder and cooperated with Pan American-Grace in the installation of such equipment on its planes. The same is true, I believe, of the system's original development of the gasoline dump valve which has had such an important effect upon provisional loads.

Just as one illustration of the laboratory research work that I have mentioned before, I would like to refer briefly to the studies which we have caused to be made with respect to the subject of flight crew fatigue. This research made by the system medical director, Dr. McFarland, includes investigations of the effects of high altitude opera-

tion in the Andes. This resulted in the development of certain techniques for combatting fatigue and keeping fit for flying thus increasing safety in air transport.

[fol. 4350] We made application of our findings by establishing field medical centers at the main system bases of operation to improve the physical fitness of ground as well as flight personnel. In the development of this medical program and as in many other similar instances, Pan American-Grace has had the opportunity of fully sharing in the benefits to be derived therefrom.

Pan American-Grace now has its own medical center at its base in Lima which is participating in the cooperative system effort of medical research.

Q. Have the various procedures for operation and maintenance which Pan American Airways System has developed been adopted by Pan American Grace?

A. Yes, gradually. Pan American operations and maintenance manuals have been adopted and are now followed by Pan American Grace.

Q. Is it true, Mr. Trippe, that Pan American's interest in the Miami-Canal Zone service lies primarily in providing a local service between Miami and Balboa, and in serving its other operations in Central and South America?

A. Decidedly not. Our original interest in the route to the Canal was as a link in the through route to the west coast.

The local traffic to the Canal has never been important except under the extraordinary circumstances that have prevailed since 1940.

The Miami-Canal Zone route has not served Central America directly since 1931, and whatever minor importance it ever may have had for Central American traffic has certainly disappeared now that the New Orleans gateway has been opened.

As to the north coast of South America, a stop was made there between 1931 and the spring of 1939, because Pan American-Grace, with its limited capacity could not fill our ships on a direct flight to the Canal, and because the Post Office Department routed the flights that way.

[fol. 4351] The direct route to the Canal which is separately described in our certificate does not serve the north coast at all.

Q. If the Board were to order an extension of Pan American-Grace's certificate to include an operation between the Canal Zone and Miami, and this should be placed in operation, what would be the effect upon Pan American's service between Miami and the Canal?

A. It would be disastrous. In normal times the greater portion of the traffic carried by us on direct flights on our route between Miami and the Canal Zone was traffic destined for or originating at points on the routes of Pan American-Grace.

Even if we assume that our military establishments at the Canal Zone would be on a larger scale after the war than they were before, I doubt that this would greatly affect the situation, since I believe the military would perform a large part of their own air transport work.

If Pan American-Grace's own operations were ever to be extended to the United States northbound business from the West Coast to points most conveniently reached through the Miami gateway would be almost wholly diverted from Pan American, since Pan American-Grace, as the originating carrier would control this traffic through to the United States.

Southbound the situation would be almost as bad since Pan American-Grace would naturally give preference in making reservations to through passengers originating on its own lines in Miami, rather than hold space at the Canal for Pan American bookings, which would be contrary to its own interest.

In other words, Pan American's route from Miami would be almost completely cut off from participation in the business to and from the west coast of South America, and the west coast operation would not be part of the Pan American Airways system service as it was set up to be and still is today, but would become an integral part of a competitive air route.

[fol. 4352] Q. In your opinion, would the requiring of Pan American-Grace to extend its line from the Canal to the United States constitute a constructive step in the development of air transportation between the United States and the countries of South America now served by Pan American-Grace?

A. No, I do not think that it would.

Q. Why do you say that?

A. Because I think that the constitution of the company would prevent it from developing this service as it should be developed.

Q. Will you please explain what you mean by that?

A. The company would be placed in the position where there was a conflict of interest, not only between it and Grace, as has been true in the past, but with both of its two owners.

From the very onset the Grace Company as owner of the Grace Line has had an interest adverse to the through passenger business of Pan American-Grace.

While this adverse interest, of course, has been dormant since 1940, I think it will be revived when the Grace Line resumes passenger operations, and that it will be felt to the same extent in the field of air cargo when that part of the air transportation business develops.

In addition, if this extension were to be made, Pan American-Grace would be placed, for the first time, in the position where Pan American also had a direct adverse interest.

[fol. 4353]

PAN AMERICAN WORLD AIRWAYS, INC. Exhibit 425.

VS THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO. 90-2594

UNITED STATES OF AMERICA

Plaintiff.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND  
COMPANY, and PAN-AMERICAN GRACE AIRWAYS, INC.

Defendants.

TESTIMONY OF CHRISTOPHER DE GROOT IN CAB  
DOCKET 779 WHICH PAN AMERICAN INTENDS  
TO OFFER IN EVIDENCE

pp. 161-162:

By Mr. Friendly:

Q. Mr. Warner's question about the stop-over passengers; the percentage of Buenos Aires traffic that stops over some place en route, could you give us an idea whether that percentage, admitting that you have no accurate figures, is substantial, and perhaps divide your answer between business and tourist travel?

A. It is quite obvious that no tourist would spend \$500 or the better part thereof to go nonstop from Miami to Buenos Aires. Even business men would not go straight through except under rare circumstances, because it is true that there are not too many business men who would just have a transaction to attend to in Buenos Aires without stopping off en route. The present emergency has, I think, increased the number of people who would travel nonstop such as couriers and those on military missions.

Q. In normal times, men such as continental travelers or representatives of the United States, firms having large interests in South America would normally stop at one of more points en route, would they not?

A. Yes, I think that could be assumed.

[fol. 4254]

PAN AMERICAN WORLD AIRWAYS, INC. Exhibit 426

In the United States District Court

For the Southern District of New York

Civil Action No. 90-259

UNITED STATES OF AMERICA

Plaintiff,

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN GRACE AIRWAYS, INC.

Defendants.

TESTIMONY OF A. B. SHEA, PRESIDENT OF PAN AMERICA AND FIRST VICE PRESIDENT OF W. R. GRACE AND COMPANY, IN CIVIL DOCKET 4882 ON OCTOBER 11, 1951, WHICH TESTIMONY PAN AMERICAN INTENDS TO INTRODUCE IN EVIDENCE.

pp. 1195-1199.

A. B. Shea was called as a witness for and on behalf of Pan American Grace Airways, Inc., and having been first duly sworn, was examined and testified as follows:

Direct examination.

by Mr. Burns:

Q. Mr. Shea, will you state your position, experience and qualifications?

A. I am president of Pan American-Grace Airways and a director. And I am first vice president and a director of W. R. Grace and Company.

Q. I would like to have you set forth Panagra's position regarding the Pan American-Panagra through flight agreement.

A. Well, we urge very strongly on the board that approval of that agreement be extended for as long a period as possible. The agreement has been in operation since 1947. Performance under the agreement has, in my judgment, been thoroughly satisfactory, and I think has been of great benefit to the travelling public, and has been of mutual benefit to Pan American and to Panagra.

[fol. 4355] Q. Have you any comment to make about the maintenance experience under this contract?

A. Our maintenance experience has been very good. I think the record speaks for itself in that regard. Our costs, which were rather high when we started, have been steadily brought down and are still being further reduced, and with the acquisition by Pan American of DC-6B aircraft, they should be still further reduced and substantially, because then we would have more or less uniform equipment.

Q. Have you a comment to make about a possible advantage in the through flight because of the pilot arrangements?

A. Well, the through flight agreement as it was conceived and as it has operated, was extremely useful in solving a pretty thorny pilot personnel problem that we had.

Prior to that all our flight crews were based in Lima, Santiago and Buenos Aires, but principally in Lima, and naturally those men did not look forward with a great deal of pressure to spending the rest of their active lives in the South American countries, with children growing up and so forth, and as a result of the through flight agreement we were able to bring a substantial number of pilots and co-pilots and their families to the United States and base them in Miami.

Q. Where does the training of Panagra pilots take place?

A. The four-engine training takes place in Miami.

Q. And you regard that as desirable?

A. I do, yes sir.

Q. Will you state briefly to the Examiner your views as to Panagra's need of an interchange?

A. You mean an interchange which would bring our planes through to New York?

Q. That is right.

[fol. 4356] A. Well, I think that whole subject has been so thoroughly ventilated, and there is such a unanimity of opinion on the desirability of a through one-plane service from Buenos Aires, via the west coast of South America, to New York, that it is hardly necessary to elaborate very much.

All the benefits have been presented on the record, but essentially, it suits the convenience of the public very substantially to be able to get on an airplane in Buenos Aires and get off the same airplane in New York, and vice versa, and avoid missed connections, and I think the approval of an interchange would be substantially increasing the volume of traffic over the routes we are talking about.

Q. There is before the Board now the question, under the issues framed, as to the approval of the proposed National-Panagra interchange?

A. Yes.

Q. Will you express for the record your views on that?

A. Yes, my views on that are as follows: I am advised by counsel that there is a valid and binding contract between Panagra and National subject, of course, to Board approval, for a Panagra-National interchange. If the Board approves that agreement, I will do everything in my power that I can to see that that agreement is implemented and becomes effective.

Q. Now, would you state what your views are with reference to the tendered interchange with Eastern, under the provisions of the Pan American-Eastern agreement, which is now before the Board?

A. Well, the interests of Panagra lie in operating into New York through an interchange agreement or arrangement, and it suits Panagra's interests, and Panagra should operate an interchange under whatever arrangements the Board approves.

[fol. 4357] Q. Suppose the Board should approve the Eastern-Panagra interchange? What steps would you think Panagra should take?

A. I think Panagra should execute an agreement with Eastern Airlines, as provided in the Pan American-Eastern interchange agreement, and start operating under it at the earliest practical moment.

pp. 1207-1223;

Cross-examination.

By Mr. Russell:

Q. Mr. Shea, you have testified that you would be willing to have Panagra enter into an interchange which would permit Panagra aircraft to be operated over the Miami-New York route of either Eastern or National, as the CAB might determine.

Now, would you state what you would consider to be the preferable and more advantageous arrangement from Panagra's standpoint, and why?

A. Yes. At the time that I applied to the CAB for approval of the Panagra-National agreement—after all these incidents took place—my principal consideration was the saving of time that could thereby be accomplished.

The Board, as you know, temporarily approved the agreement and then rescinded its approval and now we are at the point where we are considering not only that but the other arrangements as well. I haven't listened to the testimony in this case, but I have read most of it, and it seems to me that if the Board should either approve the Panagra-National agreement, or should order a compulsory interchange between Pan American and National with Panagra equipment, which are two possibilities, that the Board, and Panagra, might be faced again with protracted litigation.

On the other hand, if the Board should approve the Pan American-Eastern-Panagra interchange, with all the [fol. 4358] parties to it willing and voluntary parties, there would hardly be any prospect of delay by litigation or by further proceedings in connection with the Board's orders.

Therefore, should the Eastern agreement be approved, I think that the likelihood of Panagra beginning its through-one-plane operation into New York, immediately, or promptly, would be much better than if we had to rely on a Panagra-National interchange or on a compulsory Pan American-Panagra-National interchange.

That is the first and perhaps the most important consideration.

Another consideration, however, to which I also attach real importance, is the likelihood that with things as they are today, despite the great strides that National has made in the last few years, I think that probably the amount of traffic that Eastern would feed to Panagra would be greater than if we were working with National.

On the basis of those two considerations; therefore, and speaking solely from the Panagra viewpoint, it seems to me that as a commercial and practical proposition, the Eastern interchange would be preferable.

Q. And you believe that an interchange arrangement under which Panagra's aircraft would operate or be operated over Eastern Miami-New York route would be in the public interest?

A. I certainly do.

By Mr. Fitzgerald:

Q. Mr. Shea, you testified that Panagra might be somewhat better off to go along with Eastern and Pan American, in that deal, because it would avoid delays due to litigation.

Do you feel that the public interest would be similarly served by bowing to Pan American's and Eastern's demands?

A. I don't know what you mean by "bowing to Pan American's demands."

[fol. 4359] My feeling is that the public interest will best be served by getting a through one-plane service into operation at the earliest practical moment, with Panagra aircraft operating from the points served by us in South America.

Q. And you also stated that another consideration from Panagra's viewpoint was the fact that Eastern would feed more traffic to Panagra than National.

I am not sure I stated it exactly correctly, but I thought that was your point.

A. That is my opinion.

Q. Why, in your opinion, would Eastern be able to generate more traffic for Panagra than National?

A. Well, because, as I said, with all due regard and respect for the National sales organization, which I also said has made tremendous strides in the last few years, I say that as things are today, with the extensive Eastern sales organization, and with the extensive Eastern route pattern, I believe that Eastern would feed us more traffic than National would, as things are today.

Whether that would be true in two or three years, I don't know.

Q. You mean you think they would have the ability to do so, not that they would do it, but that they would have access to more traffic, is that correct?

A. That is correct.

Q. And is that based on the fact that Eastern is larger and better established in this Northeastern market? Is that one of the considerations?

A. No, it is due to the fact that Eastern carries more people than National does. Eastern still has a tremendous pull in the market, because of the fact that they have been in the business for so long, and for so many years, they are [fol. 4360] very aggressive sellers, and I think that as things are today, they have much more of a pull than National has, although National has made strides and is making strides to cut into their business.

Q. You mean because Eastern not only carries people out of New York and Miami, but because they have contacts with people going to Houston, Atlanta, and all of the other points on the Eastern system, increases their ability—

A. To sell.

Q. —to sell and to give traffic to Panagra?

A. I think that is right.

pp. 1258-1262;

By Mr. Fitzgerald:

Q. Mr. Shea, at the time of the National-Panagra-Pan-American agreements were before the Board for approval, before the decision in the temporary case, you testified, and you believed, did you not, that the approval of that interchange agreement was very much in the public interest?

A. Yes.

Q. And is there any difference between the situation as it then existed and the present situation, except for the fact that Pan American indicates it will not go along with that?

A. Well, there is the time element, as I said. Both matters are now being indicated simultaneously. At the time the temporary approval matter was up there was a possibility that the approval would stick and that we could start operating immediately.

Q. But otherwise except for this factor of possible delay, because of litigation, you would still testify that the Panagra-National agreement is just as much in the public interest today as it was before?

A. I think that is right.

[fol. 4361] Q. Is your decision to go along with the Eastern agreement in any way influenced by the efforts of the Pan American directors on Panagra's board?

A. No sir.

By Mr. Schneider:

Q. This question arises out of something Mr. Burns said that confuses me.

In answer to Mr. Russell's question, did you say, Mr. Shea, that you did prefer an Eastern interchange over National, or did you say that Eastern's would have more advantages?

A. My recollection is I did not use the word "prefer." I thought I said and I say now that I thought it would have greater advantage to Panagra than the National interchange.

Q. Then I take it Panagra doesn't state any preference today with respect to one over the other?

A. Well, only to that extent. I say it would be more advantageous to us to have the Eastern interchange than it would be to have the National.

Q. That is what I am getting at. Mr. Burns raised some distinction between preference and statement of advantages. When you say Eastern would have certain advantages, do you mean to say you prefer to have the one that has those advantages?

A. Now that we are attaching so much to the word "prefer," I will stand on what I said. From the commercial viewpoint, the Eastern interchange would be more advantageous in our opinion than a National interchange.

Q. You are not stating any preference?

A. No further than that.

[fol. 4362]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 427

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND  
COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

HEARINGS BEFORE THE ANTITRUST SUBCOMMITTEE (SUBCOMMITTEE NO. 5) OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES, EIGHTY-FOURTH CONGRESS, SECOND SESSION.

pp. 2489-2491

The Chairman. Proceed.

Mr. Tripp. Mr. Chairman, I would like briefly to go back to the history of our company, over the past 29 years.

It was founded in 1927 by 42 young ex-World War military pilots who invested on the average \$25,000 apiece in the enterprise in order to provide the total capital in the amount of \$300,000 that we started business with.

The first international operations were between Key West and Havana. We also had services in Alaska.

Mr. Keating. Were you one of these 42 original people that put \$25,000 in it?

Mr. Tripper. I was; yes.

The Chairman. Go ahead.

Mr. Tripper. Mr. Chairman, the company gained its present position in the international field, first by pioneering throughout Latin America. We extended from Florida to Cuba, down through the West Indies, as far as Trinidad and the Dutch Guiana; in 1929, extensions were also made from Brownsville, Tex., the other original terminus in the United States, through Mexico and Central America to the Isthmus of Panama, and across the north coast of South America. Later, the system was extended so that at the end of 6 years, it served every single country in Latin America.

During that period, Mr. Chairman, our European competitors were not asleep. They not only extended their services from Europe aerobically to South America, to serve South America through that principal trade port, but they were extending out through the Middle East and to the Orient, the rich market of the Orient, from which we were separated by 5,000 miles of ocean.

We started back in the early 1930's to organize the first trans-pacific service. We had hoped to operate through Alaska and Siberia. The then Colonel, now General, Lindbergh, our technical adviser, made the first flight in 1933 from the United States to Alaska, and through Soviet territory and Japanese territory to China, surveying that so-called great-circle route for our company.

We commenced active operations in Alaska in 1932, and, as I say, we hoped to extend those operations through to the Orient and China in 1934 and 1935.

We had an agreement with the Amtorz Trading Corporation, then the agency for the Soviet Government, whereby we

would organize for the Soviet Government a chain of airports from the Bering Sea through their territory in Siberia. The agreement contemplated that we would have the right to operate over that airway to connect the United States with our affiliate in China, China National Airways, a corporation owned 45 percent by Pan American and 55 percent by the Chinese National Government.

Unfortunately, Mr. Chairman, at that time also, difficulties prevailed between our Government and the Soviet Government. There was the question of working out a solution for American debts then outstanding. Our Government asked that we not implement that contract at the time.

[fol. 4364] Mr. Hull was the Secretary of State. A year later there was a settlement of the debt situation. We were told that we could proceed. Then unfortunately the Soviet Government changed its mind. We were advised it would be impossible to operate through Soviet territory. We were prohibited, therefore from arranging a route from the United States through Alaska and, with our affiliated operations in China, to the Orient.

The relations between our Government and Japan were deteriorating in those days. The only practical route available to an American-flag airline was the roundabout route across the Pacific, using steppingstones in the control of our Government, Honolulu, Midway, Wake, and Guam en route to Manila and Hong Kong. That service was set up in 1936. It was the first airline to operate over a major ocean route. It was flown by an airplane built in the United States in charge of an American captain and an American flight crew—by an American company, flying the United States flag.

We were proud that the first oversea service for mail, passengers, and cargo was set up under our house flag.

Several years later service was extended to New Zealand and Australia. I won't go into the details, unless the committee is interested. Also before the outbreak of the European war, World War II, we pioneered air service across the Atlantic to Europe, operating over the southern route via Lisbon to France and over the northern route via New Foundland and Ireland to Great Britain.

Then war came and most of our service went into direct operation for the military, including our services to Europe

and our services across the Pacific. Only a small part of our operations were left in the form of commercial operations.

I am happy to be able to say that over half of all of the military work entrusted by our Government to the American-flag civil airlines was entrusted to Pan American during the war years.

[fol. 4364a]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 428

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants

Before The Honorable Thomas F. Murphy, District Judge

PRETRIAL BRIEF OF  
PAN AMERICAN WORLD AIRWAYS, INC.

PART II  
VOL. 8

PAN AMERICAN DOCUMENTARY EVIDENCE

Minutes of IATA Traffic Conference  
Meetings, Bermuda, May 8-28, 1951. P-428

[fol. 4365] (Emblem)

INTERNATIONAL AIR TRANSPORT ASSOCIATION

165 BROADWAY  
NEW YORK 6, NEW YORK

[fol. 4366]

COMPOSITE and JOINT MEETINGS  
TRAFFIC CONFERENCES 1, 2 and 3  
MINUTES

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Castle Harbour Hotel, Bermuda  
May 8-28, 1951

Sixth Meeting of Traffic Conference 1  
Eighth Meeting of Traffic Conference 2  
Seventh Meeting of Traffic Conference 3  
Eighth Joint Meeting of Traffic Conferences 1 and 2  
Eighth Joint Meeting of Traffic Conferences 2 and 3  
Eighth Joint Meeting of Traffic Conferences 3 and 1  
Sixth Joint Meeting of Traffic Conferences 1, 2 and 3

[fol. 4367] PLEASE NOTE

1. Most of the sessions of this meeting were held on a "composite" or "joint" basis. Frequently, matters affecting one Conference were discussed and acted on in the presence of the other two. However, in the interest of economy and efficiency, only one set of minutes has been produced.
2. To avoid confusion in the future, the Members are requested to address correspondence to the individual Secretaries in accordance with the division of work among them, as follows:

Traffic Conference 1,  
Joint Meetings of Conferences 1 and 2,  
Global traffic matters involving  
Conferences 1, 2 and 3:

Mr. E. S. Pefanis  
New York

Traffic Conference 2,  
Joint Meetings of Conferences 2 and 3:

Mr. V. de Boursac  
Paris

Traffic Conference 3,  
Joint Meetings of Conferences 3 and 1:

Mr. H. J. Dedekam  
Singapore.

[fol. 4368]

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## CHAIRMANSHIP

Mr. R. E. S. Deichler, as Chairman of Conference 1, the host Conference, was in the Chair for Composite Meetings and when Conference 1 was in individual session.

Mr. J. W. S. Brancker was in the Chair when Conference 2 was in individual session.

Mr. B. L. Anderson was in the Chair when Conference 3 was in individual session.

## ATTENDANCE RECORD

<i>Company</i>	<i>Name</i>
Aer Lingus Teoranta	R. D. Keyes McDonnell M. Stuart-Shaw
Aero O/Y	A. Nystroem
Aerovias Guest	L. E. Cooper J. R. Joyee
Aerovias Nacionales de Colombia (AVIANCA)	J. Ucros P.
Air France	G. Delelaux R. de Seife M. de Villeneuve J. Lesueur
Air India International, Ltd.	A. F. Dubashi
American Airlines	R. E. S. Deichler J. H. Mahoney
Avio Linee Italiane	A. Farini
Braniff International Airways	C. E. Beard R. Brack L. Person
British Commonwealth Pacific Airlines	A. W. Gill I. Lawson

<i>Company</i>	<i>Name</i>
British European Airways	J. Dolby J. L. Grumbridge P. C. F. Lawton O. Lewis S. F. Wheateroff
[fol. 4378]	—2—
British Overseas Airways Corporation	J. W. S. Brancker H. M. Clarke J. Fowler A. C. Hughes L. Mayhew L. W. Rashbrook A. Snell Grove
Canadian Pacific Airlines	C. W. Budd
Central African Airways	R. A. Weeden R. A. R. Wieland
Chicago & Southern Airlines	R. S. Maurer T. H. Miller L. J. Priester
Compania Cubana de Aviacion	L. G. del Portillo
Cyprus Airways, Ltd.	D. J. Platt
Eastern Airlines	H. Dobbs W. A. Weeks
El Al Israel National Airlines	Dr. D. Bar-Nes
IBERIA Compania Mercantil Anonima de Lineas Aereas	M. de las Penas
KLM Royal Dutch Airlines	J. W. Croes A. D. Hijlkema J. W. Meijer J. G. van Reeken F. von Balluseck
Linea Aeropostal Venezolana	H. Held

<i>Company</i>	<i>Name</i>
National Airlines	W. C. Baker W. Sternberg
Northwest Airlines	A. Culbert J. Ravlin R. Watson
Panair do Brasil	H. Graham R. Teichholz
Pan American-Grace Airways	R. de Murias J. Shannon
—3—	
[fol. 4379]	
Pan American World Airways, Inc.	F. J. Crosson W. G. Lipscomb R. C. Lounsbury J. A. Maciag G. Smith W. R. Stevens P. Velte
Philippine Air Lines	B. L. Anderson W. H. Cross E. S. de Vieuna
Qantas Empire Airlines	C. W. Nielson T. Roff
SABENA Belgian Airlines	J. E. Desmet L. Schoevaerts J. C. van Cutsem
Scandinavian Airlines System	P. Backe J. Dillenbeck D. Handover A. Honne F. Kruhoffer V. Mathisen J. Nielsen T. Nilert
South African Airways	W. B. Pratt

<i>Company</i>	<i>Name</i>
Swiss Air Transport Company	W. Imhof C. Messmer E. Schneider R. Ulmer
Tasman Empire Airways	J. W. Veale
Trans-Canada Air Lines	J. Lane W. G. Wood
Trans World Airlines	J. R. Barch E. O. Cocke W. B. Price G. Spater E. Sullivan
United Air Lines	W. D. Dilworth R. Ireland

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## INTERNATIONAL AIR TRANSPORT ASSOCIATION

## SECRETARIES

E. S. Pefanis	Acting Secretary, Traffic Conference 1 (Secretary of Composite and Joint Meetings)
V. de Boursac	Secretary, Traffic Conference 2
H. J. Dedekam	Secretary, Traffic Conference 3

## OTHERS

Sir William P. Hildred	Director General
S. P. Thouvenot	Deputy Director General
R. Feick	Chief Enforcement Officer
W. M. Sheehan	Legal Drafting Officer
A. L. Young	Secretary, Traffic Committee
J. H. Krasman	Assistant Secretary, Traffic Conference 1

**ABSENT**

Aerolineas Argentinas  
 Aero Portuguesa, Ltda.  
 Air Ceylon, Ltd.  
 Air Liban  
 Ceskolovenske Aerolinie  
 Divisad de Exploracao dos Transportes Aereos (DETA)  
 East African Airways  
 Empresa de Viacao Aereo Rio Grandense (VARIG)  
 Flugfelag Islands (Iceland Airways)  
 Greek Airlines, TAE  
 Hellenic Airlines, S. A.  
 Iraqi Airways  
 Jugoslovenski Aerotransport JAT  
 Linea Aerea Nacional  
 Linee Aeree Italiane, S. P. A.  
 MISRAIR, S. A. E.  
 New Zealand National Airways Corporation  
 Polish State Airlines (LOT)  
 Servicos Aereos Cruzeiro do Sul, Ltda.  
 Transportes Aereos Portugueses, TAP  
 West African Airways Corporation

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**COMPOSITE MEETINGS****MINUTES****OPENING OF MEETING**

M/1 Mr. R. E. S. Deichler, Chairman of Traffic Conference 1, called the meeting to order and introduced Captain The Hon. Bayard Dill, Chairman of the Board of Civil Aviation of Bermuda, who welcomed the delegates. Sir William Hildred, Director General of IATA, thanked Captain Dill on behalf of the association.

M/2 The Chairman informed the Conference that to expedite progress, a set of Traffic Conference Rules and Procedures had been drafted and suggested that these be adopted by the Conference. These rules as at Appendix "A" were accepted to govern the proceedings of this and future Conference meetings.

**M/3** Members were requested to refrain from discussing the business of the Conference with the press. At the close of the meeting a press communiqué would be drafted and would be available to delegates before issue.

**M/4** The Chairman advised Members that no verbatim records would be made of the proceedings and that Members should inform the Chairman whenever they wished to have their remarks taken down for the record. A Situation Report would be issued daily and would form the basis of the minutes.

#### **EXAMINATION OF CREDENTIALS OF REPRESENTATIVES**

**M/5** The Chairman announced that the credentials had been examined by the Secretary and had been found to be in order.

#### **DETERMINATION OF VOTING MEMBERSHIP**

#### **DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL**

#### **AIR TRANSPORT SERVICES BETWEEN THE AREAS OF**

Conferences 1 and 2

Conferences 2 and 3

Conferences 3 and 1

Conferences 1, 2 and 3

[fol. 4382]

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**M/6** The Chairman announced that the list of Voting Members as shown on the first pages of the resolutions of the Conference and as at Appendix "B" and the list of Members operating between Conferences as at Appendix "C", had been determined and approved in accordance with the Conference Provisions.

## APPROVAL OF MINUTES OF PREVIOUS MEETINGS

M/7 The Conference approved the minutes of the Madrid meetings as previously circulated with the following amendments:

M/68 (p. 19)—Add the following sentence:

“PAA stated that the mileage of 2,580 miles stated by QEA between San Francisco and New York was not correct.”

M/84 (p. 22)—Reads as follows:

“Several Members were opposed in principle to the inclusion of the escape clause for Conference 2 fare and rate agreements and preferred to close them for a definite 12 months period. When it became clear that for tariff considerations it was proposed to insert the escape clause for all areas Aer Lingus, who opposed the insertion of this escape clause in Conference 2 fares and rates tables, went on record as stating that the re-opening of fares and rates in Conference 2 was primarily a matter for Conference 2 carriers and not for carriers in some other part of the world, and for that reason hoped that the escape clause would not be invoked and that Conference 2 carriers would not be involved in an autumn Conference unless they, themselves, desired to re-open Conference 2 fares and rates.”

M/154 (p. 32)—Delete the initials “U.S.” in the second line.

M/214 (p. 42)—Delete the following sentence at the end of Items 3 and 4:

“No details given.”

Add the following sentence at the end of Items 3 and 4:

“Details are contained in the carriers’ tariffs.”

[fol. 4383]

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M/215 (p. 42)—Add the following sentence at the end of this minute:

“Except as permitted by Resolution 200.”

M/252 (p. 48)—Instead of:

“There was no support for...”

this minute should read:

“There was no sufficient support to agree on...”

### REPORT OF COMPOSITE FRCS COMMITTEES

M/8 In the absence, due to illness, of Mr. S. F. Wheatcroft, during the first week of the meeting, Mr. J. R. Barch, Chairman of Conference 1 FRCS, commented on the Composite FRCS report.

#### *Fare and Rate Level in Conference 1*

M/9 Detailed questions leading to the closing of fares and rates in Conference 1 were discussed at individual sessions of this Conference. Under the terms of the final agreement reached, Members accepted the fares and rates contained in the tariffs of seven (7) Members (Braniff, Chicago & Southern, Eastern Airlines, National Airlines, Pan American World Airways, Pan American-Grace Airways, Trans-Canada Air Lines) as a basis for building up the Conference specified Fares and Rates Table. A draft table was prepared but time did not permit Members to finalize this document. The Conference instructed, therefore, that the FRCS Committee should meet in New York in June in order to complete the work.

M/10 The Conference recognized that at the FRCS meeting certain fares and rates would require negotiation. It was decided, therefore, that, in the absence of any unanimous agreement regarding a fare or rate under dispute, the lowest fare or rate in the tariffs of any one of these seven (7) Members would become the specified minimum fare in the table. It was the understanding, however, that

this condition would not apply in the case of cabotage sectors.

M/11 TCA stated that they were prepared to adjust their cargo rates so as to avoid Canadian cargo rates being lower than rates from points south of Canada such as New York. Carriers concerned also agreed to use a 10% discount for round-trip fares from and to Canada and the U. S. regardless of the effect of the domestic 5% discount. American Airlines agreed to specify United States/Mexico fares and rates in resolution form but felt that since they were the only direct air carrier operating competing services between the points concerned, no apparent practical purpose was served in specifying the United States/Mexico fares and rates.

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M/12 Resolutions 160/051 and 160/051a will be filed with Governments when the fares and rates tables referred to above are completed.

#### *Closing Fares and Rates in Conference 1*

M/13 The FRCS Committee reported that at its meeting in Nicosia there was unanimous agreement in principle to close fares and rates. It was necessary, however, for the Conference to resolve conditions on which Members stated they required agreement before the area could be closed. From statements made by Members present at Bermuda, the following were identified as the essential conditions to be satisfied:

- (i) Acceptance of the seven (7) carriers' tariffs as a basic fares and rates table.
- (ii) An effective currency resolution.
- (iii) A fast escape clause to meet competition.
- (iv) Construction rules embodying circuitry provisions and the ability to combine fares.
- (v) A satisfactory charter resolution.
- (vi) Determination of the liability of General Agents.

(vii) A limiting definition for first and tourist class services.

**M/14** The above questions were developed and resolved at both individual sessions in Conference 1 and joint sessions of the three Traffic Conferences and are discussed under the appropriate headings of this report.

**M/15** In agreeing to close fares and rates in Traffic Conference 1, the interests of unanimity and the desire to establish a stabilized world-wide fares and rates structure influenced Members' final decisions. In the spirit of cooperation, agreements were reached by Members yielding on positions they stated previously that they would accept no compromise.

#### *Fare Level of the North Atlantic*

**M/16** Several meetings of the North Atlantic Ad Hoc Committee were held to discuss the North Atlantic fare level and attendant problems. The report of this Committee, which was accepted by the Conference, provided for a fare pattern based on a one-way fare between London and New York at U. S. \$395, round-trip off-season fare at  $1\frac{1}{3}$ , 17 day special round-trip fare at  $1\frac{1}{10}$  and the introduction of an experimental tourist service across the North Atlantic on October 1, 1952.

[fol. 4385]

—9—

#### *North Atlantic Tourist Services*

**M/17** Pan American World Airways' proposal to introduce a tourist service across the Atlantic at U. S. \$225 one-way and \$405 round-trip during the Fall of 1951, dominated discussions regarding level of fares across the North Atlantic. This proposal, full details of which are given as at Appendix "D", contemplated no increase of the normal one-way fare and the elimination of discounts for off-season transportation.

**M/18** Pan American World Airways stated that they could not agree to the closing of fares across the North Atlantic unless Members made definite provision for the introduc-

tion of a tourist class service across the North Atlantic. It was recalled that Pan American World Airways' first proposal to institute tourist services was made at Bermuda in 1948.

M/19 Carriers expressed their willingness to be committed to tourist service but could not agree to the dates suggested by Pan American World Airways. Opposition to the early introduction stemmed from the fact that the majority felt that the whole question required thorough study from political, technical, commercial and economic points of view. They felt that to take action on the dates proposed by Pan American World Airways would be premature and when once committed to tourist class service the carriers could not retract in the event of this service across the Atlantic proving unsuccessful.

M/20 Other proposals, designed to provide a more gradual approach toward the ultimate accomplishment of mass reduced transportation across the North Atlantic, were considered. TWA, suggested a 17 day year-round 1-1/10 round-trip fare in combination with a special student fare to be introduced for application during the summer vacation months. Neither this proposal nor any others of a similar nature were acceptable to Pan American World Airways.

M/21 After much discussion within the Ad Hoc Committee, an agreement which was accepted later by the Traffic Conferences, was drafted. The basic terms of this agreement are as follows:

- (i) The normal one-way fare New York to London was raised from \$375 to \$395.
- (ii) The off-season round-trip fare during the months of September 1st to March 31st Eastbound and December 1st to June 30th Westbound, was fixed at 1 1/3 the normal one-way fare.
- (iii) A 17-day round-trip fare valid for travel during January 1 and March 31, 1952, was fixed at 1-1/10 the normal one-way fare.

(iv) Members may introduce experimental tourist class services on October 1st, 1952 and a long-range tourist service on April 1st, 1953.

[fol. 4386]

—10—

(v) The one-way tourist fare between New York and Shannon be not less than \$195 and not more than \$220.

(vi) A North Atlantic Operators' Committee was created for the purpose of studying, reviewing and recommending action as to both the experimental and long range phases of the tourist service program. Terms of reference of this Committee covered the technical, commercial and economic aspects of this type of service.

(vii) The actual fare of the experimental phase, within the range mentioned in (vi) above, to be agreed on the recommendation of the North Atlantic Operators' Committee by mail vote action to be concluded by October 10th, 1951. When meeting to decide this fare the majority vote shall rule and it was understood that Pan American World Airways would agree to reconsider the range of fares should economic factors make this necessary. In the event of failure of this mail vote, a joint meeting of Traffic Conferences 1 and 2 will be convened for November 13th.

(viii) Prior to the meeting of the North Atlantic Operators' Committee, meetings of cost and technical experts will be held. To facilitate these studies, replies to the North Atlantic Tourist Service Questionnaire, would be made available to the appropriate study groups.

(ix) Failure to agree the level of the one-way tourist fare, or in the event of a Government disapproving the tourist service program in whole or in part, would result in an open rate situation across the North Atlantic.

(x) The North Atlantic Operators' Committee to recommend minimum seat densities for various

aircraft. This recommendation will be made on the basis of study undertaken by carriers' technical representatives and for the guidance of this group, the following densities were suggested at Bermuda:

<i>Aircraft Type</i>	<i>No. of Seats</i>
DC-4 M1	48
DC-4	55 to 60
DC-6	60 to 64
L-49	60 to 64
B-377	91

(xi) During the experimental phase, the maximum frequency of service, including extra sections, of each Member across the North Atlantic shall be 4 round-trips per week.

[fol. 4387]

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(xii) The North Atlantic Operators' Committee to recommend the scale of charges for meals, drinks, ground transportation and other incidental services.

M/22 When the North Atlantic agreement was presented to the Traffic Conferencees the question of combination of tourist class and normal fares was discussed. Carriers were concerned that unless a formula could be established which would limit the tourist service to the gateways, the TC2 fare structure would be destroyed. One suggestion made was that where the tourist class service extended into TC2, combination services be offered at fares that equalize the through-tourist class fares provided that the passenger is not carried on standard service for more than 25% of the journey. This formula was not accepted but the Conferencees felt that this proposal should be given further study by the FRCS.

M/23 Agreement was finally reached to hold the tourist fares to the gateways and constructing through fares East of Shannon and Prestwick by combinations using the lowest normal fare for all sectors.

**M/24** At the request of El Al an exception was made in the case of Lydda. This Member explained that because of equipment limitations it would be necessary for them to operate tourist class high density seating aircraft over the whole route from New York to Lydda. They could not accept the principle that with such a service they should compete at the same through fare against a combination of tourist class service New York, London or Paris and a first class service from these points to Lydda. To overcome this difficulty, it was agreed to allow El Al to offer an exceptional fare between New York and Lydda, based on a combination of a tourist fare between New York and Shannon and a normal fare between Shannon and Lydda at 25% less. El Al would be permitted to quote this reduced fare until such time as they increase the frequency of their services—standard or tourist class—to three times weekly. During this concessionary period, other Members may offer the same fares between New York and Lydda on tourist services not in excess of two round-trip services per week.

**M/25** The above agreements resulted in Resolutions JT12(8)001a, JT12(8)054, JT12(8)155a and JT12(8)180. Eleven Members voted in favor and the following abstained:

American Airlines  
 Air India International, Ltd.  
 Aer Lingus Teoranta  
 British European Airways  
 British Commonwealth  
 Pacific Airl.  
 British Overseas Airways  
 Corp.  
 Braniff International  
 Airways  
 Central African Airways  
 Corp.  
 Canadian Pacific Air Lines  
 Chicago & Southern Airlines  
 Cyprus Airways Ltd.

IBERIA Compania Mercantil Anonima de Lineas  
 Aereas  
 National Airlines  
 Northwest Airlines  
 Philippine Air Lines  
 Qantas Empire Airways  
 Scandinavian Airlines  
 System  
 Swiss Air Transport Co.,  
 Ltd.  
 Trans-Canada Air Lines  
 Trans World Airlines  
 United Airlines

[fol. 4388]

M/26 With reference to the above vote, the following statements were recorded:

*British Overseas Airways Corporation*

"I would like, if I may, to explain the position of BOAC in respect of this resolution.

"We believe very sincerely that cheap fare facilities must be introduced on the North Atlantic as soon as this can be done. We believe equally sincerely, however, that in introducing these facilities we must avoid both un-economic operation and equally any general collapse of the existing worldwide rating structure.

"Either of these eventualities can only have a singularly unfortunate effect on both the Members of this Association and ultimately the general public. We shall not be fulfilling our function if we produce chaos.

"During the discussions which have taken place, we have consistently suggested that the Conference should adopt suitable resolutions to ensure that immediate and practical steps should be taken to make a comprehensive study of the whole problem. This study would be directed to solving the outstanding difficulties of which we believe there are many, and permitting the introduction of separate tourist service at the earliest practical moment. It seems to us, however, unwise to determine any definite date for this introduction until further progress has taken place in the industry-wide examination. To avoid penalizing the public while this examination is being made, we feel that there should be an extension of some of the cheap round-trip and off-season fares on normal services. We are already accustomed to use these fares; they do not upset any other rate structures, and they do not make it necessary for transatlantic operators to rush into expensive equipment programmes before having full information available.

"These appear to us to be the sentiments of the great majority of the operators concerned.

"It may appear illogical for BOAC to take this attitude with regard to North Atlantic tourist services and at the same time to be co-sponsor of a paper recommending the introduction of a tourist service between the United Kingdom and South Africa.

"I would merely say that in the case of this particular service, we gave general notice of the intention and the proposed fares at the FRCS in Nicosia; we submitted every ascertainable fact and detailed costs and revenue to the Conference; every precaution was taken to pre-

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[fol. 4389] vent this service upsetting the rest of the structure, and we were ready to adopt other limitations to meet the wishes of other operators. Furthermore, although this proposal had, by its very nature, very much less effect on the general rate system, we do not threaten an open rate situation with all its troubles, if the Conference—in its wisdom—decides not to accept it.

"We still urge that a study of the North Atlantic tourist services should proceed as quickly as possible, regardless of the ultimate fate of these resolutions. I would again emphasise that BOAC is in favor of the introduction of tourist services as quickly as possible, but the proposed resolutions dealing with North Atlantic fares have the following objections.

"It appears extremely unwise to determine a tourist fare within such close brackets for introduction in October 1952; it may well be that this level will prove economically impractical.

"Similarly, no attempt has yet been made to settle completely the repercussive effect of such services, nor to overcome all the known problems.

"There is as yet no agreed definition of a 'tourist service.'

"An experiment conducted during the winter is unlikely to produce reliable data, and it is obviously going to be difficult for Members wishing to participate to convert aircraft during the high season.

"Finally, no arrangements have been included to give improved cheap fare facilities on normal services during the Summer of 1952.

"For the reasons given, therefore, BOAC does not consider that the proposals are really in the best interests of either the public or the industry. As, however, they may represent a compromise which is sufficiently acceptable to prevent an open rate situation, and may ultimately accelerate the introduction of tourist services, we feel our only course is to abstain from voting."

#### *Trans-Canada Air Lines*

"TCA wishes to record the following statement in the minutes as to its reasons for abstaining on Resolution JT12(8)(180):

"1. We believe tourist service is both necessary and desirable provided such service is offered to the public

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"[fol. 4390] at fares the industry agrees are reasonable and economically sound.

"2. We feel that the fare which has been agreed is not economically sound.

"3. We feel that an unrealistic approach is being made to the problem of providing tourist or second class service and that only after a full-blown study should the service be initially inaugurated.

"4. TCA thinks that as a result of this study just referred to, the proposed relationship between tourist and standard *must be* altered so that the percentage differential will be substantially lower in order to reduce diversionary effect.

"5. In our opinion, the proposed fares cannot be justified on a full-allocated cost basis and this fact will

be evidenced by the IATA Cost Study. In view of this, the experimental period which has been agreed to will hamper our joint efforts to bring about a satisfactory solution to the problem of reaching the potential market at cheaper fares.

"6. In our opinion, alternative proposals featuring special promotional fares calculated to tap a vast new potential market would be preferable and at the same time allow the Member carriers to sample and digest the problems associated with cheaper fares, at no additional expense to the carriers and with a reasonable opportunity to increase their revenue considerably."

*Trans World Airlines*

"I would like to make a statement for the record in connection with our abstention from the last vote.

"TWA has always endorsed low fares and has taken a leading position in urging promotional fare devices that have been made available in the past.

"The North Atlantic operators were unanimously agreed on the principle of tourist class service but we, and I believe others, were reluctant to set a specified fare and other details of operation including a starting date for such service without an adequate study of the economics of such an operation.

"The need for study is obvious since no one has produced figures showing the estimated profit or loss of any proposed tourist class service or its operating results on a system basis after giving effect to diversion

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• [fol. 4391] from standard services or how much additional subsidy from Governments will be required to sustain it.

"Nevertheless from the outset of this Conference, we have stated that we would not attempt to force our individual views on the other transatlantic operators and that we would not oppose the tourist class service if it was the will of the Conference that such a service should be agreed upon at this time."

*Scandinavian Airlines System*

SAS, in registering their abstention from voting on the North Atlantic tourist service program, wish to record the following statement:

"Mr. Chairman, with all the seriousness and sincerity in my command, I would like to go on record with a short outline of basic reasons why SAS are opposing the proposed tourist class as placed before us by Pan American World Airways in Bermuda, May 7th.

"I am speaking on behalf of my company, SAS, here. Although it is a small carrier, only responsible for some 8% of the total traffic carried across the Atlantic, it is generally acknowledged around this table that it is a sound operator, carrying its traffic in a dependable, regular way and with a high standard of service, probably second to no other carrier. I think it is also known, through our Cost Committees, that we are a low cost operator and I would also like you to rest assured that we conduct our affairs purely on a business and commercial basis. I am not certain whether it is generally known, but it is a fact that we have during the five years of our operations, received no subsidy whatsoever for our North Atlantic service and have yet been able to make a profit including proper allocations for depreciation and development costs. This record, I think, entitles me to defend and explain our attitude.

"I think part of a good defense is attacking the opponent's weak points and, therefore, I will look a little bit into the record of the carrier proposing tourist class.

"But first I would like to say that to my great disappointment we have been spending ten days in Bermuda with one carrier trying, without success nor single support, to convince a compact majority of eleven operators that its idea was to the benefit of the public and the airlines. We are all here as international operators trying to solve our problems by negotiation and com-

[fol. 4392] promise. That is what we call the IATA spirit. The carrier involved has even indicated that due to his Government's interest in tourist class he can see no other solution to this problem—apart from giving way to the majority point of view—than to create an open rate situation.

"It is known to all around this table that the Government agency of this carrier has advised its IATA Members, that although they are interested in the introduction of the tourist class, they have a second thought in case the majority of international carriers are opposed to the introduction of tourist class at present. I hesitate to believe that this means that this carrier's Government will be in agreement with an open rate situation. I do not think that we are entitled to enter into either domestic or international politics, but with the experience of this Government's tremendous effort to create goodwill and cooperation, help and assistance to those who need it, it is difficult to understand such an interpretation by the carrier of this Government's policy.

"Secondly, I would like to underline that as far as we are concerned, we are here just as men of business and to talk business. The carrier, who during this Conference, has singled himself out as not willing to go along with the majority is not exactly representative of what I would call profitable affairs. During the last couple of years, which I have casually investigated and which appear to have been quite profitable years for ourselves and others, this carrier in 1949 in its annual report, has reported a mail pay of \$19,000,000 on its Atlantic Division. Out of this, around \$9,000,000 have been actually received, the balance still pending appropriate authorities' decisions. If this carrier during 1949 on its Atlantic Division operations (which include North Atlantic, Bermuda, Africa and through to Calcutta, as far as my information goes) had only received the appropriate international mail rate payment (6 gold francs, etc.) on the same proportion of differ-

ent categories of mail as SAS have carried, they would have sustained a loss of around 8.2 million dollars. The equivalent figure for 1950, as far as I can make out, is 6.9 million dollars. The figures can naturally be discussed but the tendency is clear. If one carrier is given such tremendous support by its Government it is easy to understand why such a carrier can involve itself in costly experiments which might ruin carriers who want to carry out their traffic and fulfill their responsibility, without any charge to the taxpayers.

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[fol. 4393]. "I have difficulties in understanding that this carrier's government will accept such an experiment if it cannot be proved to be founded on business-like principles and at the same time also implies the effect on others that their sound economic base will be destroyed. I hesitate so much more because this carrier's Government is known during the last years to have made immense efforts to carry out economic aid to those nations whose carriers are represented around this table. It may be true that this carrier's Government has good reasons for this policy and it may also be true that the same Government has assisted other nations' carriers to create a North Atlantic service through currency measures and economic aid which have allowed the purchase of American aircraft, but I hesitate again in accepting, that this Government—contrary to the previous intentions—now should be willing to possibly ruin the business of the carriers which hitherto have been aided through this Government's policy.

"If political principles like this are involved in our discussions about North Atlantic fare levels, I can as a man of business do nothing better than leave these questions in the hands of those who are more able to deal with them than myself and my company.

"Then I would revert to a discussion of the business in the proposed tourist class service. Firstly I want to deal with the question looked upon as a separate North

Atlantic problem. I will ignore the completely unknown counter-actions which we may have to face from our competitors in the steamship business in the event of the introduction of the tourist class on the North Atlantic. I think I can trustfully leave the aspect of this problem to the imagination of my colleagues around this table. Thereafter, I want to consider for a moment the impact of a tourist class on the North Atlantic on the European rate structure and even the impact on the worldwide route net and fare pattern of other Members.

"The Pan American paper placed before us on May 7 is a very complicated document dealing with a still more complicated problem. We would not think that the carrier intentionally has delayed the presentation of this document until we were all divorced from our headquarters with our files, statistics, and experts, and the views of our managements, but I think it is asking for much if it has been seriously expected that we should be able to discuss the details of the proposal based upon that preliminary paper during this Conference.

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[fol. 4394] "The document is not sufficiently accurate nor complete to imply the element studies and element figures and has not tried to evaluate important aspects of the proposal.

"I will not take up your time with the many facts which I could state here, but just turn to the two important pages of all business, the cost page and the revenue page. On the cost side I want it to be known that this paper has quoted a cost figure less depreciation, which is in itself lower than the cost figure presented by the same carrier in Brussels in February, 1949. This is in spite of the fact that everybody round this table will agree to general increases in operating costs. Even the same carrier has reported a roughly 30% increase in operating costs between February 1949 and February 1951 on their standard operations costs within the IATA Cost Committees.

"Then turning to the revenue side, there has been no attempt in the Pan American study to evaluate the diversion from the normal standard fare traffic. I want you to bear in mind that we have been presented with a factor diversion of at least 65% by the same carrier regarding their 1-1/10th fare traffic experience. On our own operational cost experience with 82 round trips, during one calendar year, using DC-4 tourist class aircraft equipped with 55 seats, the proposed 40% reduced fares will show a net loss of \$680,000—or something between  $\frac{1}{2}$  and  $\frac{3}{4}$  million dollars—based on 60% load factor and assuming that four out of every ten passengers carried on the tourist service were diverted from the standard services—a diversional factor of 40%. I can vary the figures and diversion factors but the result remains: loss. As I said, this is based upon the experience of a carrier operating far into the black on this section with the know-how of profitable business. You can yourself figure out the results Pan American would achieve with their documented cost figures, operation 365 flights per year or 4-5 times as many as ourselves.

"So far I have concerned myself with purely North Atlantic operations and have made no reference at all to the impact which it is bound to have on European shorthaul operations. We ourselves operate a very considerable network in Europe, but we have had the advantage of access to the proposal and been in a position to make rough and ready calculations as to the effects. Our colleagues in IATA who are not so fortunate are completely in the dark as to the effect of this proposal on their services. If our ideas are indicative—and I am certain they are—many of these carriers will be faced with economic disaster if this proposal is allowed to go forward in its present form. I think this is one of the most important points to bear

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[fol. 4395] in mind before any agreement to the institution of a tourist class is given. Although the proposal purports to contain the North Atlantic tourist

class within gateways, it must be quite obvious to everybody that this is impossible and the extent to which the tourist class will creep on is almost without limit.

"I have always been willing to go along with other carriers in our Conferences and I will continue to do so. But I am not in favor of the introduction of tourist class service according to PAA's unsupported proposal—I hesitate to make a statement in favor of something in the future which is unknown. Therefore, I can not either go along, Mr. Chairman, with your proposal kindly submitted to us tonight, but I would like to say that if necessary we will accept the introduction of a tourist class when time is right and I am willing to discuss, negotiate and accept the view of the majority with regard to such timing. This is our position in this matter and our attitude towards IATA, an association which we like, which we will back and which I hope will continue in the future to the benefit of all of us."

SAS stated that they also joined with TWA and BOAC in regard to the statements made for the records of Conferences 1/2.

#### *Pan American World Airways*

"It has been the position of a number of the Members operating North Atlantic services that, while they agree in principle with the introduction of a tourist service across the North Atlantic, they think that the matter should be given more study, before any such service, even an experimental one, should be inaugurated.

"This position is not new. In effect it has been advanced by these Members every time within the last three years that Pan American raised the matter. It was advanced at the meeting of the Conferences in Bermuda in 1948 when Pan American first proposed the tourist service. It was advanced at the meeting of the Ad Hoc Committee of the North Atlantic operators

which met in February of 1949, in Brussels, for the sole purpose of considering a detailed tourist service proposal submitted by Pan American. It was advanced, again, when Pan American raised the matter of its tourist service proposals at the meetings of the Conferences in Nice in May 1949, in Mexico City in November 1949 and in Madrid in May 1950.

"This procrastination has continued in spite of the fact that at the Nice meeting Pan American openly offered to make available to the Members its detailed studies of the tourist service proposals. Only two of the Members availed themselves of this offer.

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[fol. 4396] "In Pan American's opinion for the Conferences further to have deferred a definite tourist service program on the grounds of additional study would have been shortsighted and contrary to the interest of the public and of the Members themselves."

M/27 The following were nominated to represent their respective Conferences on the North Atlantic Operators Committee:

*Traffic Conference 1*

Mr. C. E. Beard	— Braniff International
Mr. R. W. Ireland	— United Air Lines

*Traffic Conference 2*

Mr. M. Stuart-Shaw	— Aer Lingus, Teoranta
Mr. P. C. F. Lawton	— British European Airways

*Traffic Conference 3*

Mr. A. Culbert	— Northwest Airlines
Mr. B. L. Anderson	— Philippine Airlines

*Mid-Atlantic Fares*

M/28 In the absence of a specific recommendation from the FRCS, the Conferences set up a working group to examine the Mid-Atlantic fare structure. The report of the group, which was accepted by the Conferences, provided for a fare pattern as follows:

- (i) With the exception of fares to and from Madrid, a general increase of the one-way fares by \$20 was

agreed. To remove the inconsistencies existing in the present Mid-Atlantic table, it was necessary, in some cases, to apply greater increases.

- (ii) The normal on-season round-trip fares were established at 180% of the one-way fares and off-season round-trip fares at a reduction of \$150 over the normal round-trip fares.
- (iii) A 17 day fare established at \$225 less than on-season round-trip fares was agreed.
- (iv) Miami, Nassau, Tampa and West Palm Beach were common-rated at \$428 from London with routings via New York or Bermuda-Azores.

M/29 With reference to the fares to and from Madrid, IBERIA was opposed to any increases. AVIANCA, however, suggested that Barranquilla and Caracas should be common-rated. This Member felt that since the mileage

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[fol. 4397] between these two points and Madrid were approximately the same, the present fare differential in favor of Caracas could not be justified. After negotiation between the Members concerned, the Madrid/Caracas fare was raised from \$454 to \$461.

M/30 Air France notified the Conference of its intention to introduce a service between Paris and Martinique via a more direct route than that at present operated over the Mid-Atlantic. This would have the effect of reducing fares between the Southeastern area of the Caribbean and points in Europe. To allow for this eventuality, the Mid-Atlantic fares agreement included an alternate table of lower fares between certain points to become effective 45 days after a Member notifies the Conference that a service over a more direct route will be inaugurated.

M/31 In view of the fact that the Caribbean area is also served by Members operating via the North Atlantic route, the FRCS had suggested that, as a basis for applying the 15% deviation rule, miléages between points should be specified. This proposal was not acceptable and it was agreed instead to name specific basic routings against fares. Furthermore, it was agreed that when the routing from

Aruba, Barranquilla, Caracas, Curacao, Maracaibo or Port of Spain to points in Conferences 2 or 3 via New York is within 15% of the basic routing. Members would be permitted to quote the same fare via routings over Montreal.

M/32 PAA stated that since some of the routings specified were not the shortest operated as defined in the Construction Resolution JT12(8)014a, they understood that Members may quote the same fare via any routings within 15% deviation of the basic routing.

M/33 Provision was made to enable any Member operating over the Mid-Atlantic route to meet any undercuts arising from the application of combination of fares via the North Atlantic.

M/34 Air France informed the Conferences of its intention of applying a resident fare between Paris-Martinique-Guadeloupe at approximately \$395 one-way. This and other cabotage sectors were designated in the fares table as being included "for information only" and that "no other fare shall be used for construction purposes."

M/35 It was the opinion of the majority that a North Atlantic tourist service would have an immediate effect on Mid-Atlantic fares and that it would be unrealistic to suppose that a tourist service across the North Atlantic could be contained by imposing restrictions on advertising and sale of such fares in the Central American and Caribbean traffic generating areas, or by any other means. These carriers felt that they would be compelled to introduce Mid-Atlantic tourist service fare levels despite the economic considerations involved and notwithstanding the fact that because of operational limitations—in particular the long section Azores-Bermuda, high density seating could not be utilized profitably.

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M/36 Because of the close relationship between Mid and North Atlantic fares, it was decided to cover the Mid-Atlantic agreements—Resolutions JT12(8)054b and JT12-(8)155b—with a Special Effectiveness Resolution JT12-(8)001f. Under this resolution if, for any reason, the

North Atlantic fare agreement becomes void, any Member operating the Mid-Atlantic route could, upon notice to the Conference, void the Mid-Atlantic fares agreement.

### *South Atlantic Fares*

M/37 The Conferences accepted Resolution JT12(8)054c prepared by a Working Group of South Atlantic operators. On the assumption that a satisfactory currency resolution would be adopted by the Conference, the Group recommended retention, with minor adjustments, of the present fare pattern.

M/38 The Conferences also agreed to renew the Special Spanish Resident fares which, at IBERIA's request, were increased by approximately 19%. Provision was made to enable the Resolution JT12(8)054d passed to become effective on July 1, 1951.

M/39 During discussions in the Working Group, two Members favored Northbound fare reductions of 25% for the reason that with the present rate of exchange for the Argentine peso at 14.03 to U.S. \$, the selling fares in that country had reached a point which made sales difficult. There was also a desire to be in a better competitive position, vis-a-vis steamship carriers. Other Members considered that load factors were satisfactory and that no reduction was necessary. With reference to surface competition, Air France, who had been asked by the FRCS to make a survey of the position, informed the Group that as from April 15 steamship companies had increased their fares from Buenos Aires by 15% and recent statistics indicated a diversionary trend of passenger traffic in favor of air.

M/40 A proposal that the present North and Southbound fares between Rio de Janeiro and Europe be equalized by removal of the \$90 differential found little support.

M/41 The effect that a possible institution of tourist fares to Europe would have on the South Atlantic fare structure was considered. A rough calculation of fares from South America via North America to Europe compared with South America direct to Europe showed that a tourist

class service from Brazil and Chile to Europe via North America would undercut first class fares from South America direct to Europe by approximately 10% but would not undercut fares from Argentina and Uruguay. At the present level of Southbound fares, practically no undercuts would result. For the time being, therefore, the Conferences considered that the possible effect of North Atlantic tourist class services on the South Atlantic fare structure could be disregarded.

[fol. 4399]

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**M/42** Resolution JT12(8)164d, governing off-season fares between Europe and South America, was adopted unanimously. This resolution permits off-season fare constructions combining South Atlantic crossings with crossings via the North and Mid-Atlantic routes.

*Fares in Conference 2.*

*Europe only*

**M/43** The FRCS reported that cost estimates submitted by Members justified a 10% overall increase of the fares in Europe. Mail Vote Resolution 200 (Mail 17)052 had the effect of increasing those fares in Europe which required adjustment in order to raise fares from Europe to the Middle East.

**M/44** Using the mail vote figures as a basis, and taking into account the FRCS recommendations, the European Working Group met in Paris on April 10 and prepared a table of fares. The fare structure recommended to the Conference eliminated the undercuts caused by the mail vote and removed the existing differential fares between Switzerland and Germany/Austria. Several questions which the Working Group were unable to settle were referred to the Conference for action.

**M/45** Air France reminded the Conference that at Nicosia they had voiced the opinion that, compared with surface transport, the level of air fares in Europe was too high. Furthermore, to attract the large percentage of passengers in Europe who still travelled by surface means,

they had been considering the introduction of tourist class services in the near future. In the meantime, Air France felt that there was a need for lower fares.

M/46 Specifically, this Member requested a reduction of the fares between France and Switzerland and the removal of the present directional feature of these fares.

M/47 SWISSAIR, who stated that their present load factors were good, believed that the fares were at an economical level and that very little extra traffic would be gained by decreasing fares.

M/48 The Members concerned agreed to accept a compromise proposal which would diminish the prevailing directional differential. The fares from France were kept at approximately the present level but the fares from Switzerland were reduced. Resolution 280/052a, which was adopted, provides that these new fares and also directional fares from Geneva to Amsterdam/Brussels come into force at the same time as the mail vote. Air France and SWISSAIR notified the Conference that it might be necessary for them to use the escape clause if the mail vote fares were disapproved.

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M/49 It was agreed that the fares within Germany would not be increased although several Members wished to make upward adjustments. SAS accepted increased fares in Scandinavia but gave notice that they wished to file special 8 day round-trip fares within Scandinavia.

#### *Fares between Europe and Middle East*

M/50 The Conference agreed to revalidate, with adjustments to eliminate undereuts, the fares as increased by the mail vote. To permit ALI, using DC3 equipment on their routes within the Middle East, to remain competitive, the Conference granted their request that Class "B" fares be introduced between Rome-Athens and Rome-Beirut.

*Fares between Europe and Africa*

M/51. Mail Vote 18, together with upward adjustments of fares to East Africa, formed the basis of the fares agreed between Europe and Africa.

M/52 PAA explained that according to their understanding, Resolution 200 (Mail 18)052 would not disturb the existing relationship between fares but would be in the nature of an overall increase. Since the mail vote did disturb the relationship, PAA was obliged to vote negatively.

M/53 BOAC informed the Conference that they were now prepared to increase fares to East Africa and thus restore the balance between East and West African fares. With this assurance and bearing in mind that the period of validity of the fares proposed by Mail Vote 18 was only for three months, PAA withdrew their negative vote.

*Tourist Service between Johannesburg and London*

M/54 SAA, with BOAC as co-sponsor, submitted full details of the tourist service they wished to introduce between Johannesburg and London.

M/55 Commenting on their proposal, SAA stated that they had no traffic rights between Lydda and London and that they undertook not to institute a tourist service between London and Cairo until tourist class services had been agreed in Europe.

M/56 The proposal envisaged a weekly return service between Johannesburg and London operated by DC4 aircraft with 54 seats. The service was designed to cater solely for through passengers from Johannesburg/Livingstone/Nairobi to Rome/London and to protect other carriers on the route, passengers would not be carried at tourist class fares between the intermediate points. According to SAA's estimates, assuming an end-to-end load factor of approximately 64%, the unit cost per seat mile in respect of the tourist service would be about 33½% lower than that of the standard class constellation service.

M/57 BOAC drew attention to the fact that unless SAA were permitted to operate this tourist class service, a non-IATA carrier—Pan African Air Charters—would be au-

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[fol. 4401] thorized by the South African Transport Commission to operate a similar service for a five year period. BOAC contended that IATA Members would encounter greater difficulty in competing with such a service operated by a non-IATA Member than if it were operated by SAA. They believed that the case was not parallel to the North Atlantic in that the South African route was an end-to-end route which did not have repercussions on the IATA fare structures beyond the termini. Furthermore, whatever decision was taken by the Conference, a tourist class service would exist; if not operated by South African Airways, then by its non-IATA competitor—Pan African Air Charters.

M/58 SAS believed that it would be difficult to accept SAA's proposal to be effective in October 1951 when the tourist service across the North Atlantic had been postponed until October 1952. They felt that the same reasons which governed the decision taken on the North Atlantic should apply to the South African proposal and that the matter was of such importance that it should be given more complete study. This view was supported by other Members and it was agreed, therefore, to provide for an experimental weekly tourist service to commence on October 1, 1952, and a study program similar to that agreed for the North Atlantic. This decision resulted in Resolution 280/180 with Air India International, BEA, KLM, QEA, SABENA, SAS, TWA recording abstentions. SABENA abstained from voting as they were not aware of their Government's attitude to this tourist service which might affect the fare structure of their operations to and from the Belgian Congo.

#### *Special Fares in Conference 2*

M/53 Resolution 280/155 extends the validity of a number of Conference 2 excursion fares at present in force.

M/60 The Conference adopted Resolution 280/155c providing for a special directional round-trip fare Paris-London-Paris proposed by BEA. This Member explained that on the London-Paris route there is a very large directional flow of traffic at the main holiday weekends such as Easter, Whitsun, August Bank Holiday, etc. This traffic necessitates the operation of numerous extra services which carry full loads from London to Paris for the few days before the holiday and return empty, whereas for the few days following the holiday they operate empty from London and return full.

M/61 BEA believed that the return traffic from Paris to London could be created by the introduction of this very low fare for the periods when the flow was heavy in the opposite direction. To prevent diversion of normal traffic, it was agreed that these fares would be valid for 5 days and would be available for sale only in Paris. The effective date of this resolution was set for July 1, 1951.

M/62 Resolution 280/155d specifies the 17 day special round-trip fares between points in Europe agreed by the Conference.

[fol. 4402]

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M/63 When the level of normal fares in Europe was discussed, Air France agreed to increases and to maintaining directional fares to and from Switzerland provided they would be permitted to introduce special round-trip fares between France on the one hand and Switzerland and Italy on the other hand. This Member proposed a special 10 day round-trip fare at 110% of the normal one-way fare.

M/64 It was established that 61% of the traffic on the routes to Switzerland consisted of persons not resident either in Switzerland or France and it was thought that the introduction of these special fares might have a diversionary effect on traffic on other routes.

M/65 After much discussion and negotiation between the Members concerned, agreement was reached. Resolution

280/155h which becomes effective on July 1, 1951, permits 17 day special round-trip fares between France and Switzerland at approximately 125% one-way. Also included in this resolution are agreed 23 day special round-trip fares from Geneva to Amsterdam and Brussels. Sale and advertising of these fares are restricted to the country of commencement of travel.

M/66 Air France's request for reduced round-trip fares between France and Italy was met in part by the adoption of Special Winter Resident Fares—Resolution 280/171, valid until April 30, 1952. These 8 day fares are available only to French and Italian nationals proving permanent residence in France and Italy. Air France notified the Conference that they would request a mail vote to extend the effect of this resolution beyond April 30 as it was their desire to offer these special fares during the whole period of the fares and rates agreement. PAA abstained from voting since these fares were available only to French and Italian citizens.

M/67 Resolution 280/156b which permits Members to establish special one-way night fares during the summer season of 1952 between London and Dublin was agreed unanimously.

M/68 In order to make adequate provision for the special nature of the heavy flow of traffic between Western Europe and the oil fields in the Persian Gulf, the following series of fares were agreed. To prevent IATA agreed or constructed fares being undercut, these fares may be combined only with North Atlantic fares.

- (i) Resolution 280/164a—Off-season specified directional return fares commencing from points in Europe good for travel from March 1 to June 30 Eastbound and from October 1 to February 29 Westbound. Sales of these fares are restricted to U.K., U.S.A., Canada, France, Belgium, Switzerland and Netherlands.
- (ii) Resolution 280/165—Special round-trip fares at 20% discount on twice the normal one-way fares,

sales being restricted to those countries in TC2 between which the fares apply and North America.

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(iii) To encourage vacation traffic from the Persian Gulf to Europe, two 17 day round-trip fare resolutions were agreed. In both resolutions sales are restricted to the Persian Gulf, but whereas tickets sold under Resolution 280/165a are valid for travel only between 1st December and 15th February, those under Resolution 280/165b are available for travel between 15th October and 15th April.

M/69 The following Class "B" (now referred to as "B" fares) in the Middle East were approved. These fares were expressed in specific amounts instead of percentage reductions from the normal fare. These fares were agreed in deference to Middle East regional operators who were unable to accept increases in the local fare structure. In permitting this departure from the accepted method of expressing Class "B" fares and also in agreeing larger differentials than hitherto allowed, the Conference wished to record that they were not thereby creating a precedent.

*Abstained.*

s. 280/172	Athens—Cairo	One-way	Shs. 429	PAA, SAS, TWA
s. 280/172d	Damascus or Beirut— Istanbul	"	Shs. 300	Cyprus, PAA, PAB
s. 280/172e	Athens—Beirut	"	Shs. 540	Cyprus, PAA
s. 280/172f	Rome—Beirut	"	Shs. 910	ALI, KLM, PAA, PAB, SAS, TWA
s. 280/172g	Athens—Alexandria	"	Shs. 393	PAA, TWA
s. 280/172j	Athens—Khartoum	"	£49.10.0	PAA, SAS
s. 280/172m	Rome—Athens	"	Shs. 504	PAA, SAS, SWISSAIR, TWA

*Fares between Conferences 2 and 3*

M/70 Fares between Conferences 2 and 3 based on Resolution JT23(Mail 3)055 with further increases to India/Pakistan/Ceylon, Australia and New Zealand were agreed and resulted in Resolution JT23(8)055.

M/71 These fares were prepared by a Working Group of Conference 2 operators who examined and recorded the different views held by Members as to the level of fares.

M/72 Air India International and SAS represented the extremes and the latter explained that in their opinion fare levels should be based on cost, a reasonable profit and what the traffic can bear. Their experience showed that cost of operations to the East was higher than on other trunk routes whilst on the other hand, fares expressed on a mileage basis were lower. In any case, an increase of 20% in fares appeared necessary to compensate for the increase in costs as established by the Costs Committee.

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M/73 SAS drew a comparison between sea and air fares and explained that whilst the actual shipping fares were lower, a combination of these fares, the expenses incurred en route and elapsed time presented a different picture.

M/74 Air India International stated their position and explained that owing to a delay their cost figures had not been included in the representative data established by the Cost Committee. Their latest cost figures showed a 7% decrease on the previous figures. This Member requested the Conferences to keep the special commercial considerations prevailing on the Indian sub-Continent in mind. In their opinion an increase in the air fares would divert traffic to surface carriers. They were, however, willing to accept a small increase in fares, but their main concern was the off-season when very little traffic is carried.

M/75 Air India International stated that they had experimented with a three month validity round-trip excursion fare which had not proved successful. On the other

hand, the result of an off-season round-trip fare had been very encouraging, but they felt that to exploit the off-season market to the fullest extent, a supplementary one-way off-season fare was required. By this means they hoped to tap 3 new types of traffic, normal surface traffic travelling first-class, government employees travelling second-class and student traffic between Europe and India.

M/76 The level of off-season one-way fares proposed by Air India International was based on a Bombay-London fare of £100. The 23 carriers were willing to study the proposal but were apprehensive of the effect these fares would have on other sectors, including around-the-world fares. They felt that unless through fares were protected, AII's proposal was unacceptable. A carrier proposed the introduction of a new type ticket with a special validity for the return journey. Under this system a certificate would be issued to the passenger indicating that the return ticket is directionally valid for a specified time but limited to a certain period of the year. This proposal was rejected as being impracticable. Other methods of attacking the problem such as residential qualifications, control through currency restrictions, travel subject to space available and limitation of sales to Indian, Pakistani and Ceylonese nationals were also explored. Finally Members decided to base eligibility to travel on residential status.

M/77 Resolution JT23(8)164e gave effect to the off-season fares agreed by the two Conferences. This resolution set the one-way Bombay-London fare at £115 and the off-season from 1st October to 28th February. QEA and PAL abstained from voting. These Members qualified their abstentions as follows:

(i) "QEA is not in favor of low one-way off-season fares, however restricted, owing to their far-reaching effect on the fare structure. Also in this particular case it has serious repercussions on fares in the immediate area and in our opinion

[fol. 4405] the net result will be to dilute revenue rather than to increase it. However, in order to

allow AII to try the experiment, we shall abstain from voting, but it is felt that full details should be made available to the next Conference as to the results actually achieved."

(ii) "Philippine Air Lines are opposed to the introduction of this resolution because our traffic records did not show the need for such reduced fares, which will, in the opinion of PAL, only result in dilution of revenue. PAL does not wish, however, to stand in the way of an experiment desired by a carrier whose main traffic stems from sectors directly concerned with the above resolution. Nevertheless, PAL requests that supporting traffic data be produced at the next Conference to justify consideration of these reduced fares should their continuation be desired by any carrier."

M/78 PAL also abstained from voting on Resolution JT23(8)155g for the same reasons as given above. This resolution was proposed by Air India International and permits Members to offer Special Christmas 17 day round-trip fares at 110% of the normal one-way fare travel commencing in India, Pakistan and Ceylon to points in Europe. Air India International maintained that there is a demand for these fares amongst European residents in India, Pakistan and Ceylon wishing to spend the Christmas holidays in Europe.

#### *London-Sydney Fares*

M/79 Three carriers were in favor of an increase in the London-Sydney fare, two wished to maintain the status quo.

M/80 BOAC and QEA qualified their position by stating that competition from shipping companies is extremely acute on this route and an increase would divert traffic to surface carriers offering transportation at substantially lower fares; moreover, the latter, who were scheduled to put new ships in service, had no intention of increasing their fares.

M/81 PAA felt that the traffic referred to by BOAC and QEA was essentially of a round-trip nature and suggested an increase of the one-way fare, but retaining the present round-trip level by a special round-trip fares. This suggestion found no support.

M/82 After many proposals were considered, BOAC and QEA, supported by the majority, expressed their willingness to agree on an increase to £280 of the London-Sydney Eastabout fare, provided the fare via the Western Hemisphere is fixed at a higher level of £290. PAA, although accepting the proposal as a compromise solution, felt that the £10 differential was disproportionate to the difference in mileage and contrary to the principles applied in the construction of fares.

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M/83 Other fares, related to the London-Sydney fares, were agreed as follows:

London--Wellington/Auckland £285 (both directions)

London—Noumea £290.

#### *Fare Level in Conference 3*

M/84 Except for small upward adjustments to fares from India/Pakistan to Siam/Hong Kong/Philippines/Japan, fares at levels substantially the same as those provided for in the recent Mail Vote Résolution 300(Mail 2)053, were agreed. Additionally, the sectors not affected by the mail vote were increased.

M/85 TEAL abstained from voting on the fares from Sydney to Nandi/Suva via Auckland. Nandi and Suva were common-rated at Sh. 1100, whereas TEAL felt that the Sydney-Suva fare should be Sh. 60 lower than the Nandi fare.

M/86 The Conference accepted Air India International's proposal to increase fares between India, Pakistan and Ceylon and to maintain the principle of differential trunk and regional service fare levels. Resolution 370 053 also provides for a reduction of the fares between India,

Pakistan and Ceylon, contingent upon lower fares being applied by any regional operator.

*Special Fares in Conference 3*

M/87 Resolution 370/155 extends the validity of Conference 3 excursion fares.

M/88 The Common Interest Group Travel Resolution between Australia and New Zealand was re-adopted. At TEAL's request, Resolution 370/158 reduces the number of passengers constituting a group to ten.

M/89 Resolution 370/164 reintroduces off-season fares between Sydney and Singapore and also extends off-season facilities to cover traffic between Singapore and Auckland/Wellington.

M/90 Resident fares between Colombo and Singapore were revalidated for another year, as at Resolution 370/171a.

*Fares between Conferences 3 and 1  
Central and North Pacific fares*

M/91 Except for increases from Singapore to the West Coast set at \$780 direct and \$835 via Sydney, the fare levels were not changed.

M/92 The Conferences agreed to specify fares between the West Coast gateway points and Bangkok, Delhi and Karachi but not to Calcutta. TWA opposed the inclusion of these fares since they felt that between India and North

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[fol. 4407] America fares should be constructed over the Atlantic gateway points. They agreed, however, to withdraw their objection on the condition that transpacific fares to India are constructed over the Pacific gateway points and not equalized with fares constructed over the Atlantic.

M/93 PAA stated that the distance curve had not been used for the construction of transpacific fares and considered that fares via the Pacific would not undercut fares via the Atlantic.

### *South Pacific Fares*

M/94 In view of the increase in the fare from London to Sydney, BCPA and CPAL recommended an increase between the Canadian and U.S. West Coast points on the one hand and Australia and New Zealand on the other. They suggested an upward adjustment of 8% but would agree to a smaller increase.

M/95 PAA did not desire any increase and since no agreement could be reached, it was decided to maintain the status quo.

M/96 Resolution JT31(8)056 reflects the fare levels between Conferencees 3 and 1.

### *Around-the-World Fares—Resolution 154a*

M/97 In arriving at a solution to the problem of around-the-world fares, which has been a subject of disagreement since Mexico, two schools of thought had to be reconciled. On the one hand, Members interested primarily in encouraging certain markets, especially those in the Western Hemisphere, stressed the advantages of an agreed specified fare from all points of origin. Opposed to this, other Members maintained that they would, as a consequence, lose revenue by charging less than if the circle-trip construction principles were used to compute fares.

M/98 In the final agreement reached, the Conferencees, acting on the recommendation of a Working Group, decided in favor of constructing around-the-world fares by the application of the circle-trip construction rule. However, to a certain extent the fixed price feature from on-line points in North America was retained. This was made possible by Members agreeing to apply the full amount of the North American sector of the journey regardless of the point of origin.

M/99 In Resolution 154a, which was adopted unanimously, fares from U. S and Canadian points are constructed on the basis of one-half the lowest round-trip fare between point of exit from and entry into North America plus one-half the sum of the lowest on-season round-trip of the

portion of the journey travelled outside the U. S. and Canada. The fare for trips originating outside Continental North America is a summation of the lowest through round-trip on-season fares from the point of commencement of the trip. The resolution limits construction to the use of the through fares, including jointly published through fares, as published by the Member performing the transportation, and advantage cannot be taken of other fares published by a carrier not performing the carriage.

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M/100 Resolution 154, defining around-the-world trips, as distinct from circle-trips, was accepted by all Conferences.

*Relationship between London and Paris—Transatlantic and Eastern Hemisphere Traffic*

M/101 Air France explained that when the relationship between London and Paris in conjunction with transatlantic and Eastern Hemisphere traffic was originally discussed some 5 years ago, consideration was given in the first place to traffic between U. S. and Western Europe only. Circumstances have since changed and much of the traffic now proceeds beyond Europe. The present differential of \$20 for transatlantic traffic was held to be unfair when related to the prevailing rate per mile over the North Atlantic route. Air France proposed a reduction to \$14.

M/102 Although there was sympathy for the point of view expressed by Air France, the Conferences were unable to agree to this adjustment since it would have the effect of disturbing the North Atlantic fare structure. In this connection the question arose as to whether the difference of \$6 should be added to the London—New York fare, should be deducted from the Paris fare or should be divided between the two fares. There was considerable opposition to further increases in the New York/London fare which traditionally set the transatlantic level and which had already been agreed at \$395. There was also considerable opposition to reducing the Paris fare by \$6 as this would in turn reduce the Amsterdam, Brussels and Scandinavian fares. For the same reasons, Members were opposed to

splitting the difference. In view of the importance of obtaining agreement at this meeting, Air France accepted the present differential on the understanding that their proposal would be accepted at the next Conference.

*Possible effect of Cabotage fares on the IATA fare Structure*

M/103 The FRCS at Nicosia had given careful study to this question and had suggested two methods to prevent extended use of special cabotage fares undermining the IATA fare structure.

M/104 One method proposed that in the fare tables of fares affected by cabotage sectors should be identified and that in the event of these being changed by the cabotage carrier during the period of the fare agreement, other Members would be permitted to adjust the other fares affected by the alteration. The cabotage carrier should not have the power to protest these changes.

M/105 Alternatively, it was suggested that the Conferences resolve that all carriers draw the attention of their governments to the desirability of giving maximum regard to the effect on the international rate structure of any cabotage fare of rate alterations. Carriers themselves would undertake formally to continue to observe the policy already followed by which every effort is made to limit the effect of cabotage fares and rates on adjacent international points. Specifically, carriers should undertake to ensure that cabotage fares and rates are governed where necessary by imposing conditions such as residential qualifications.

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[fol. 4409] proof of nationality, short period return limitations, etc. A great deal of experience in the administration of such precautionary measures has already been obtained by many companies and these Members believed that an exchange of information and a comparison of methods will show that the elements of an entirely satisfactory means of control exist.

M/106 Supporters of this suggestion maintained that it was hardly practicable for the carriers responsible for the

cabotage sectors to bind themselves not to alter the cabotage fares and rates between Conferences without Conference action because governments may direct changes and carriers cannot themselves place limitations on the freedom of action of their governments. Nevertheless, they believed that it would be possible to agree on the basis of a Recommended Practice that unless exceptional circumstances arose, all other interested carriers would be given 30 days notice of any contemplated cabotage sector changes.

M/107 PAA considered that the two methods represented opposite extremes and that neither was satisfactory. This Member proposed that all cabotage fares be included in IATA rate structures as agreed specified fares.

M/108 BOAC, Air France and SABENA were unable to agree to the PAA proposal. BOAC stated that it has been their policy, where operating over routes regarded as cabotages by their government, to avoid dislocation of the international fare and rate structure. This had been done voluntarily and they had hitherto refrained from making changes except in order to conform with governmental policy or where domestic national considerations dictated the necessity for making changes. Air France stated that they regretted that they could not agree to the proposal since traffic within the French Union was more important to them than other international traffic. The French Government had no statutory control over the fares of other air lines operating within the French Union but had complete control over the fares of Air France. It would be quite impossible for this Member to relinquish their rights to alter fares on their cabotage sectors as proposed.

M/109 The Conferences were unable to agree on any of the various proposals made. It was decided, therefore, to continue the present policy of specifying cabotage sectors in fares and rates agreements for construction purposes only.

#### *Duration of Fare and Rate agreements*

M/110 With the exception of the North Atlantic and TC1 rate agreements for which special escape clause provisions

were made, fare and rate agreements were established for a period of 12 months beginning October 1st, 1951, with the proviso that notice of rescission of approval can be given by any one carrier on or before October 9th, 1951 and such notice of rescission to take effect for the period following March 31st, 1952.

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#### *Rate Level in Conference 1*

M/111 The level of rates in the tariffs of seven Members (Braniff, C & S, Eastern, National, PAA, Panagra, TCA) were adopted as the basis on which rates in Conference 1 were to be agreed. A draft rates table was prepared but time did not permit Members to eliminate the discrepancies contained in the draft. The Conference instructed the FRCS to meet in New York in June to finalize the table and ruled that in the absence of unanimous agreement on any rate, the lowest rate appearing in the tariff of any one of the seven Members would become the minimum specified rate in the table.

#### *Rate Level over the North Atlantic*

M/112 The Conferences agreed to increase basic cargo rates by 10%.

#### *Rate Level over the Mid-Atlantic*

M/113 The present Mid-Atlantic specified rates were increased approximately 10% with rates to additional interior points in Conference 1 being included in the specified table.

#### *Rate Level over the South Atlantic*

M/114 Agreement was reached to increase South Atlantic rates by 10%.

#### *Rate Level in Conference 2*

M/115 Rates within Europe were increased approximately 10% except in those cases where the Conferences felt that certain sectors could not absorb such an increase without materially affecting the traffic flow.

M/116 The Chairman of the FRCS reported that when preparing the European rates table, KLM had submitted a list of the routes over which they did not desire to see increases. This list included nearly all the routes they operate in Europe which, in view of the importance of this Member's network, would have prohibited the application of an overall 10% increase in European cargo rates. KLM were of the opinion that an increase would result in more commodity rates being filed. To overcome KLM's apprehension it was agreed that all commodity rates at present in effect would expire with the resolution. They would then have to be refiled, and the Board was directed by the Conference to increase the net revenue available from commodity rates and to limit the number of rates to be accepted.

M/117 A general commodity rate for consignments of over 500 kgs. at the present rate of Shs. 1 was agreed for the Frankfurt/Berlin and the Nuremberg/Frankfurt/Munich/Berlin routes.

M/118 Eastbound rates to Middle East were increased by 10% above the level agreed in Mail Vote 20 but Westbound rates were left unchanged. PAA, TWA and SAS were

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[fol. 4411] opposed to the principle of directional rates and believed that the Commodity Rates Board should be used, to cover directional rates.

M/119 SAS drew attention to the fact that rates from Lydda to points in Scandinavia were extremely high compared with rates to other European points. They were prepared to accept this relationship and not to decrease rates to Scandinavian points if it were possible to file a commodity rate of Shs. 4/3 for textiles from Lydda to Copenhagen. This Member stated that they were losing considerable traffic because shipments were being despatched from Lydda to points in Europe—notably Zurich—and then carrier to destination by truck at very low rates. Members agreed that if SAS filed a commodity rate as suggested it would be given sympathetic consideration.

M/120 Cyprus Airways were opposed to any increases in the cargo rates in the Middle East or between the Middle East and European gateways.

M/121 A 10% increase Southbound and no change Northbound was agreed for the Europe-Africa cargo rates.

*Rate Level between Conferences 2 and 3*

M/122 Rates between Conferences 2 and 3 were increased in the Eastbound direction only from 5% to 15%.

M/123 The Conferences agreed to add cargo rates between Auckland and London to Resolutions JT23(8)055 and JT123(6)057 at Shs. 40.25 Southbound and Shs. 27.92 Northbound.

*Rates within Conference 3*

M/124 With certain adjustments to eliminate undereuts, the rates within Conference 3 were maintained at the present level.

M/125 Air India International had recommended a 25% increase in the regional cargo rates. This Member stated that they intended bringing the matter up again at the next Conference and in the meantime requested other Members to study the possibility of increasing their rates or alternatively to discontinue quantity rebates.

*Rates between Conferences 3 and 1*

M/126 With the exception of adjustments to eliminate undereuts, the existing level of rates was maintained.

*Construction Rules for Passenger Fares and Cargo Rates—Resolutions 014a and 014b*

M/127 Mr. Barch, Chairman of the Ad Hoc Committee set up by the FRCS at Nicosia to study questions connected with construction of fares and rates, presented a comprehensive report on the subject.

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M/128 Mr. Barch recalled that at the Madrid meeting, two draft resolutions were submitted to the Conferences. The first was an elaboration of an existing construction resolution and the other dealt with indirect routings and introduced several far-reaching principles. Although these proposals were discussed at great length, the Conferences were unable to accept them and they were referred back to the composite FRCS for further study and clarification.

M/129 The FRCS at Nicosia attacked the problem by drawing up a detailed questionnaire and appointed a committee under Mr. Barch as Chairman to analyse the results. For want of time, the committee was unable to finish its work at Nicosia and it was arranged therefore that the Chairman, in collaboration with the LDO, would make a complete analysis and prepare a report for submission to the Conferences.

M/130 On the basis of studies made, the many difficulties and various principles involved in formulating construction rules were segregated under two headings as follows:

- (i) Those principles on which there was unanimous or nearly unanimous agreement.
- (ii) Those principles on which there was a clear division of opinion.

M/131 The report also discussed the generally accepted fundamental principles of IATA rate-making which, in the opinion of the committee, form an integral part of construction rules to make these sound and workable. Briefly, these principles were identified as follows:

(i) *Definitions*

An agreed basic terminology was regarded as a first essential. In the past it had been found useful to classify all rates set out definitely in a Conference resolution as "specified" and those established between meetings as "constructed." A "normal" fare is regarded as the full fare charged for a regular or standard service whilst a "special"

fare denotes a reduced fare based on some limitation of service, period of validity, class of persons eligible, type of aircraft, etc.

(ii) *Establishment of fares and rates at Conference meetings*

One of the principal functions of a Conference meeting is to agree fares and rates. Those agreed as normal are specified in the 050 series of resolutions and any special fares are specified in the 150 series of resolutions.

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Experience has shown that every fare between two points must be specified in relation to a particular route, otherwise it would be difficult if not impossible to apply construction principles such as the indirect routing rule.

Whilst it is axiomatic that at meetings Conferences must have complete freedom to take whatever action is considered necessary with regard to fares and rates, nevertheless, certain procedures (Recommended Practice 1014) have been established and are followed as closely as practicable.

Agreed specified fares and rates may be either higher, lower or equivalent to the amount that would be derived from the direct application of construction principles. If a fare or rate is made higher, it is essential that it be identified or "flagged" as not being subject to any between-Conference construction rules, otherwise after termination of a meeting, these rules would immediately unsettle the higher agreed fare or rate. Similarly, those fares or rates established in amounts equal to those obtained by the application of normal construction principles must also be "flagged."

(iii) *Construction of Fares and Rates between Conference meetings*

The IATA rate-making machinery attempts to reach a practicable compromise between two conflicting principles, namely stability and flexibility. Stability is obtained by specifying the maximum number of fares and rates at Conference meetings and these may not be changed until they expire. Members look to the between-Conference construction rules for flexibility. Greater stability is achieved by either flagging a great many key sectors or by making the between-Conference construction rules severely restrictive. Conversely, a higher degree of flexibility is obtained by minimizing the number of flagged fares and rates or by making a construction resolution less restrictive.

(iv) *Basic Construction Principles*

Construction rules have been sufficiently flexible to enable Members to make between-Conference adjustments in order to meet competition from any scheduled air carrier. It has also been the practice to establish a floor, below which Members may not go, determined by any one of the three principles, namely, the "lowest combination principle", "more distant point principle" and the "indirect routing principle."

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The construction rule is worded so that a Member may apply whichever one of these principles is the most favorable (the lowest). In addition to these basic principles, the construction rule should deal with new routes, combination of different types of fares, notice of newly constructed fares, basic currency, and what shall be done when sectional fares are increased between Conferences.

M/132 In order to finalize their recommendation to the Conference, the Ad Hoc Committee submitted a list of policy matters requiring Conference decision and on the basis of such decisions construction resolutions for passen-

gers and cargo were drafted. For the sake of clarity, examples and diagrams were included wherever appropriate and the construction rules were dealt with in the following manner:

- Para. (1) lists series of agreed definitions.
- Para. (2) explains 3 basic principles—"lowest combination," "more distant point" and "indirect route."
- Para. (3) reflects the Conferences' decision with respect to the "higher intermediate fares" or "backhaul principle."
- Para. (4) establishes the method of constructing fares over new routes in a manner which protects existing specified or constructed fares.
- Para. (5) defines the procedure to be followed by a Member constructing, between Conferences, a fare lower than an existing IATA specified or constructed fare.
- Para. (6) defines the procedure to be followed to effect an upward adjustment of a specified or constructed fare in cases where the sectional fare over which the through fare has been constructed is increased by any Member.
- Para. (7) establishes the rule that special fares may not be combined with other special or normal fares unless expressly authorized by the appropriate fare resolution.
- Para. (8) reflects the recommendation made by the Traffic Committee with respect to the combination of tourist and normal fares.
- Para. (9) explains the purpose of proportional fares and ensures that these fares shall not be used to circumvent or defeat the agreed principles of construction.
- Para. (10) stipulates that all fares and rates shall be constructed initially in the basic currency of the Conference.

**Para. (11)** establishes the date on which all existing fares other than specified fares must conform with the construction resolution.

**Para. (12)** provides that any fares constructed between Conferences are subject to subsequent action by the Traffic Conference.

**M/133** In presenting the draft resolution for the construction of passenger fares, the LDO explained that it represented the result of extensive study and experience gained by Members over a period of years. With reference to paragraph (3) dealing with higher intermediate fares, SAA felt that since no attempt had been made to control the limit of backhaul, some additional words should be added in order that carriers could specify points where they did not wish the backhaul principle to apply. This view was not supported since the rule as set out in the resolution had general acceptance and, furthermore, it was recognized that any particular situation could be protected in a Conference fare agreement.

**M/134** PAA, whilst they did not object in principle to the exception made in paragraph 3 where a portion of the indirect fare is in U.S. and Canada, felt that the resolution should not give special privilege to any Member or area. In their opinion, adjustments of a similar nature are frequently necessary on domestic sectors in several parts of the world where cities of importance are located fairly close together. This Member suggested an amendment to the resolution enabling the exception to be applied in other domestic areas. This was not agreed.

**M/135** A further suggestion made by PAA that, to avoid confusion, the term "regular fare" be substituted for "normal fare" was not accepted.

**M/136** The passenger construction rules Resolution 014a recommended by the Ad Hoc Committee were accepted by Traffic Conferences 2 and 3 at all joint meetings.

[Handwritten notation—Minutes—Bermuda—May 8-28, 1951]

M/137 With reference to the position in Traffic Conference 1, Members decided that it would be unrealistic during this initial period of closing of fares and rates for the Conference to impose stringent construction rules. It was agreed, therefore, to adopt the recommended passenger construction resolution with certain modifications. These were:

- (i) Deletion of the indirect route or 15% deviation rule.
- (ii) Deletion of the higher intermediate fare or back-haul rule.
- (iii) That fares established between Conferences should not be subject to the right of protest.

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- (iv) That although the resolution becomes effective on October 1, 1951, Members would be given until January 1, 1952 to adjust any fares other than those specified in the agreed fares table, introduced before October 1, 1951 to conform with the resolution.

M/138 The Conferences agreed that where appropriate, the provisions of the construction rules for passenger fares should be applied for the construction of cargo rates. Certain principles differed however. It was the opinion of the Conferences that a rate could be met over an indirect route. However, if the indirect route exceeded the direct route by more than 15%, the rate via the indirect route could not be altered although carriage may take place via the indirect route at the same rate. In other words, cargo destined to a farther point may be carried via an indirect route through a higher rated area.

M/139 Another important question concerned the combination of special and normal cargo rates. The Conferences were of the opinion that IATA general commodity rates

may be combined with domestic rates or other IATA general commodity rates, but unless expressly authorized by the appropriate specific commodity rate or class rate resolution, these should not be combined with any specific commodity or class rate to produce lower through rates.

M/140 The above decisions were reflected in resolutions agreed by the Traffic Conferences and joint meetings. Resolution 160/014b adopted by Traffic Conference 1 modified the resolution accepted by the other Traffic Conferences to the extent described in paragraph M/137 above.

M/141 Members congratulated Messrs. Barch and Sheehan on the excellent results of their studies.

#### *Meeting Special Fares in other Areas—Resolution 014c*

M/142 Joint meetings 23, 31 and 123 accepted an amendment to the present resolution to cover student and tourist fares. Basically this resolution permits carriers operating the Pacific to take account of discounted fares on routes across the North Atlantic as they might affect traffic moving between the Far East and the Western hemisphere.

#### *Special Construction Rule—Directional Fares and Rates—Resolution 014d*

M/143 Traffic Conference 2 adopted Resolution 280/014d governing the construction of fares where directional fares are involved. The resolution applies to Europe only.

#### *Special Canadian Construction Rule—Resolution 014e*

M/144 TCA proposed that paragraph 8(a) of Resolution 014a be amended by the addition of the words "except that this paragraph should not apply to constructions to and

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[fol. 4417] from the U. S. and Canada." This Member referred to previous discussions when TCA stated that their acceptance of the North Atlantic fares was conditional upon their right to take tourist fares into the domestic area where no tourist service is operated

M/145 The Conferences felt that a separate resolution should be adopted to cover TCA's point. PAA suggested that an exception could be made by specifying the London/Vancouver fare. TCA, however, opposed this as they did not wish to be held to a specified fare level.

M/146 PAA, supported by NWA, stated that they were not in favor of a resolution making it possible for a carrier to charge a fare to and from Vancouver based on the sum of the Seattle/New York coach fare plus the New York overseas first class fare and to provide first class service between origin and destination. It was suggested that if TCA wished to quote a tourist fare for the transcontinental portion of the journey, the solution would be for this Member to introduce a coach service.

M/147 Resolutions JT12(8)014e and JT123(6)014e which were adopted, represent a compromise limiting the applicability of the special construction rule to routings via Montreal. This resolution also contains a protest feature based on 50% of the carriers concerned and provision is made that the resolution will be rescinded if and when TCA introduce a transcontinental tourist service in Canada.

#### *Advertising and Combinations of Special Fares*

M/148 The FRCS meeting at Nicosia made an analysis of the combination provisions of existing resolutions and recommended inclusion in the construction rules of a clause which would preclude, in general, the combination of special and normal fares. The FRCS further suggested various methods of enforcing a "no combination" rule.

M/149 Whereas the Conferences accepted the proposal to incorporate a "no combination" rule in the construction resolution, it did not consider it practicable to adopt a further resolution covering the advertising of special fares. As far as possible, this matter is covered in the existing resolutions on special fares. It was felt that it is virtually impossible to prohibit insertion of special fares in Members' tariffs, timetable and in official guides and that the advertisement of fares in national and international newspapers and periodicals, which Members must have the right

to continue, cannot be controlled in such a manner as to prevent their appearance in print in a country other than those designated.

M 150. With reference to the recommendation made by the FRCS that action be taken to explain to agents the "no combination rule" and the reason for it, it was agreed that the Agency Committees of the Traffic Conferences prepare a letter on this subject for dispatch to all IATA approved agents. By this means, agents should be advised that infringements of these regulations constitute a violation of their Sales Agency Agreement and also if a passenger

[fol. 4418] misses a connection regarding two or more fares in combination, he may be charged a "no show charge" at the point of connection. The FRCS Committee was requested to continue study of the question of the combination of fares and in particular to examine the possibility and desirability of applying residential qualifications to all special fares.

*Advertising and Ticketing of Tourist Fares—*  
*Resolution 120*

M 151. At Bermuda, the Traffic Committee was requested to study the combination of normal fares and tourist class fares and also the problem of competition between fares based wholly upon normal service and those based wholly or in part on tourist service. With reference to the latter question, the Traffic Committee recommended the adoption of a resolution providing that all advertising and promotional material for journeys involving in whole or in part tourist fares should make it clear to the public that a tourist service is involved. It was further suggested that on the front cover of a ticket sold in connection with a fare wholly or partly tourist, the word "tourist" should be printed or rubber stamped.

M 152. This proposal was accepted by all Conferences and joint meetings as at Resolution 120 with the addition of the provision that for the purpose of this resolution the term "tourist" includes Class B and coach fares.

### *Accumulation of Discounts*

M 153 The Conferences agreed the following principles recommended by the FRCS:

- (i) That discounts allowed under Resolution 158 (Common Interest Group Travels) should apply only to normal on-season and off-season fares and that off-season fares should be taken to include off-peak, off-hour and Special Night Fares.
- (ii) That children's and infants' discounts be cumulative with any Special Fares.
- (iii) That the 25% discount in Resolution 268 (810e) could only be allowed on the normal through one-way fare.

M 154 With reference to the 50% discounts permitted for tour conductors in Resolution 204, Conferences could not accept the FRCS view and agreed that the discount should not be applicable against the normal one-way fare, but against the fare applicable to the tour.

M 155 The FRCS was requested to give further study to the question of accumulation of discounts.

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### *Conversion Rates—Resolution 021a*

M 156 Mr. de Murias, Chairman of the Conversion Rates Ad Hoc Committee explained that the draft prepared by the FRCS Committee does not depart materially from the existing principles except insofar as it provides that the rates of exchange in Resolution 021b shall be used to convert from published fares to selling rates. Most of the other changes were made either as a result of this change, or to provide solutions to the specific problems raised by Members.

M 157 For Conference 1, it appeared necessary to make the resolution considerably more restrictive in order to minimize the effect of the large spread between official rates and free market rates for certain currencies in the Western Hemisphere. For instance, the draft resolution

recommended for adoption by Conference 1 goes as far as possible in restricting the acceptance of currencies at an undesirable exchange rate for sales made in the currency of the country of sale. The device employed was to require that other sales be made in Canadian or U. S. dollars.

M/158 The draft submitted for Conferences 2 and 3 were accepted as at Resolutions 280/021a and 370/021a. Conference 1 adopted Resolution 160/021a as drafted, with an amendment permitting British subjects in Argentine to purchase tickets in sterling for transportation from this country to Europe. Braniff abstained from voting in Conference 1.

*Conversion Rate Table—Resolution 021b*

M/159 Conferences agreed, with certain changes, the table of conversion rates prepared by a Working Group.

*Rounding-Off and Application of Discounts—Resolution 023*

M/160 The Conferences considered the draft submitted by the FRC'S which introduced a formula for the rounding-off from published to selling fares and rates. This formula uses a numerical factor designed to eliminate one or more rounding-off steps.

M/161 A new section (2e) was added to provide for handling of minimum value charges, and value surcharges. The new draft elaborated the method of rounding-off prorates by the addition of the prorate provisions covered in Resolution 017. The FRC'S reported that the reason for the numerical factor formula was due to the shortcomings of the present resolution. Three round-ups are required under the existing method before final rate in pounds(lbs.) is obtained, and this gives rise to a high percentage of cargo rates being approximately one cent higher per pound when converted from a currency other than the basic currency. The proposed resolution is aimed at avoiding these three round-ups and reduces the calculating time and improves accuracy by permitting the establishment of consistent numerical factors in calculating machines.

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M 162 There was opposition to the new proposal being applicable to passenger traffic as it did not result in exact round-trip fares of 180% of the one-way fare. It was agreed, therefore, to adopt the ERCS proposal for cargo and excess baggage, but to retain the present method in respect to passenger traffic.

M 163 It was the understanding of the Conferencees that under Paragraph 1 of the present Resolution 023, that when using fares quoted by a non-IATA source in local currency other than dollars for £(Sterling), it would be correct to convert the through one-way fare into the IATA basic currency and then apply the round-trip discount and round-off.

*Meeting Rates and Practices in Traffic Conference 1—  
Resolution 160/115*

M 164 Braniff had stated that they could not agree to the closing of fares and rates in Traffic Conference 1 unless they were permitted under a Conference resolution to meet, with a minimum delay, any competitive situation arising from action by either a non-IATA or an IATA air carrier.

M 165 Braniff submitted a draft resolution for consideration by the Conference. With reference to the paragraphs of this draft resolution which concerned meeting competition from IATA carriers, the majority considered that Braniff's proposal, which virtually allowed the carrier to take the law into their own hands, was a radical departure from the principles as set forth in the Conference Provisions. It was felt that it would not be proper to introduce an additional and novel method of enforcement before the present machinery had been tested. The suggestion made by Braniff might give the impression that Members already considered the enforcement machinery as already created inadequate.

M 166 Braniff stated that they had foreseen the very same objections voiced by the majority, but they considered it essential to provide for a fast escape clause on the lines

of their proposal if fares and rates were to be closed. This Member was willing, however, to meet the Conference's view by extending the escape clause from 30 days to 60 days and in this way allow sufficient time to determine the effectiveness of the present enforcement machinery for giving relief to carriers injured by unfair competition.

M/167 In view of the peculiar situation connected with the closing of Conference 1 fares and rates, Braniff's proposal was accepted in redrafted form as at Resolution 160/115.

*Meeting Non-IATA Competition in the Middle East —*  
*Resolution 280/115*

M/168 The FRCS Committee drew attention to the very serious situation in the Middle East where in a number of instances local operators have been compelled to reduce their fares in order to meet non-IATA competition. With short distance operations and seasonal traffic, the ability of local operators to hold on in the face of fare-cutting by non-IATA carriers is very much less than in the case of the trunk route operators. The non-IATA carriers in the

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[fol. 4421] area use the same type of equipment as the IATA local operators and, therefore, the latter are more affected than the trunk line operators using superior equipment.

N/169 Local IATA operators are unable to wait for normal Conference action and, as a solution, the FRCS recommended the adoption of a resolution which would permit greater flexibility than can at present be given by annual Conference meetings and the mail vote procedure.

M/170 The draft resolution contained a protest clause which would protect all carriers as much as does a mail vote. The main difference between fares being put into effect on the basis of the recommended resolution as compared to a mail vote lies in speedy action due to simpler machinery which avoids the complicated procedure of return ballots.

M/171 Traffic Conference 2 accepted the recommendation made by the FRCS as at Resolution 280/115b with certain

amendments proposed by Members. The protest period in paragraph 3 was reduced from 30 to 20 days and provision was made for the fare to become effective 50 days from the date of original notice. Malta, Cyrenaica and Tripolitania were added to paragraph 8(a) and Italy was added to paragraph 8(b).

*India/Africa*

M 172 Air India International requested that a non IATA competition resolution be adopted to apply for traffic between Conferences 2 and 3 to cover their route from India and Pakistan to Aden and Kenya. This was agreed and Resolution JT23(S)115 was adopted.

*"B" Fares in the Middle East—Resolution 280/172k*

M 173 The FRCS recommended that there should be a clear distinction between "B" fares as established in the Middle East and tourist and other reduced fares which are principally of promotional value. The Committee considered that the introduction of "B" fares should be only for the purpose of equalizing the competitive difference between various types of aircraft used by Members serving the same or similar points, so that Members operating inferior equipment have the opportunity of participating in the traffic. This description was included in the draft resolution submitted to the Conference.

M 174 The FRCS also considered that the problem of non-IATA competition in the Middle East should be dealt with separately under another resolution. Furthermore, it was recommended that a "B" fare should not be regarded as a specified fare but as an agreed percentage reduction to the normal or any other special fares applicable to be applied by a carrier operating inferior equipment.

M 175 With minor changes the Conference accepted the FRCS draft resolution. Malta, Tripolitania, Cyrenaica were added to paragraph 5(a). ALI suggested that Italy also be added, but in view of strong objection, withdrew their proposal.

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M 176. Considerable discussion took place as to the term to be used for this type of fare. The words "regional" and "local" were held to be confusing as they are used with other meanings in IATA. Several carriers objected to the expression "Class 'B' fares" as they held that when the term "class" was used in advertising it implied inferior maintenance, air crew, etc. Other Members believed that publicity should denote that the services using this type of fare were below normal, which in fact is the case.

M 177. Finally, for want of a more suitable term, "B" fares" was agreed upon, and the resolution was amended to provide that when published or shown in the companies' timetables, the fares must be specified as "B" fares and should not be advertised as normal class fares. ALI and SAS abstained from voting.

M 178. ALI abstained since they felt that they should not be compelled to use any special expression when advertising these fares. Furthermore, they considered that the resolution adopted does not favor the development of Class "B" air traffic which, in their opinion, was represented by that segment of the public who were not able to pay normal fares. In their opinion, Class "B" fares should remain independent of possible future increases in the normal fares and should in all cases be agreed as specific amounts and not percentage reductions.

#### *Cost of Ground Transportation--Resolution 105*

M 179. A proposal to make it mandatory in all Conferences to charge passengers for road transport from the airport to town terminals was defeated. However, Recommended Practice 160 1105 as at Appendix "E" containing this provision was adopted by Conference 1 and it was agreed that this Recommended Practice, in the form of a resolution, would be submitted for mail vote on January 1, 1952.

M 180. In Conference 2, Recommended Practice 280 1105 as at Appendix "F" was adopted as an interim measure. This recommends that Members give early consideration to

the proposition that passengers be charged for ground transportation and provides for study of the proposition on an area basis at local meetings of Members' representatives. Members were requested to give the question of making a charge for ground transportation further study and to submit comments to the Secretary of Traffic Conference 2. Based on these comments, the Secretary was authorized to issue a mail vote on January 1, 1952.

M 181 In view of the fact that Conferences 2 and 3 did not agree to make a charge for ground transportation, it was necessary to consider means of controlling practices in certain areas where long distance surface transport is being provided free of charge to common-rated points. Resolution 280-105 and 370-105 were adopted to restrict such practices. In this resolution no money may be paid directly or indirectly to the passenger in lieu of ground transportation and when one or more cities or town terminals are served by an airport, free ground transportation may not

[fol. 4423] be offered to a citycenter other than the nearest one, except if 30 days written notice is given to Conference Members and no protests are received.

M 182 Certain Members applied for immediate exemption under the terms of this resolution, as follows:

- (i) Permission was granted in respect of Jan Smuts Airport which lies between Johannesburg and Victoria and serves both these cities.
- (ii) Permission was granted in respect of Livingston Airport to serve both Livingston and Victoria Falls which are separated by a distance of 14 miles.
- (iii) Permission was granted in respect of Dusseldorf and Cologne which are separated by a distance of some 40 kilometers and can each be served from the airports of What and Lohauschen.
- (iv) SAS requested that an exception be made for their services which operate alternatively to Beirut and Damascus. Permission was not granted by

the Conference since Beirut and Damaseus were in different countries and approximately 65 miles apart by road.

*Sleeper-Surcharge—Resolution 250*

M 183 *Traffic Conference 1.* A sleeper surcharge of \$15 for an upper berth and \$25 for a lower berth per trip was agreed with five Members abstaining. Resolution 160/250 reflecting this decision does not apply to transportation between Honolulu and the West Coast points in Canada and the United States.

M 184 *North Atlantic.* TWA moved that a sleeper surcharge of \$50 be applicable over the North Atlantic. 8 Members were in favor, 2 voted against.

M 185 *Mid-Atlantic.* A sleeper surcharge of \$50 per trip was agreed across the Mid-Atlantic via the Southern route.

M 186 A motion by PAA that the sleeper surcharge for transportation across the Mid-Atlantic, including to and from points in Europe, be \$25 per night. This received 2 favorable votes and 14 Members abstained from voting.

M 187 *South Atlantic.* It was agreed that the sleeper surcharge across the South Atlantic would be fixed at a minimum of \$50 per trip.

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M 188 *Europe/Africa.* A sleeper surcharge of £15 for single occupancy and £20 for double occupancy per trip was agreed. PAA abstained from voting.

M 189 *Balance of Conference 2.* A motion that the sleeper surcharge be £15 for single occupancy and £20 for double occupancy failed by one vote. PAA explained that they could not accept a higher charge within Traffic Conference 2 than that over the North Atlantic on services which extended into Traffic Conference 2 as far as Beirut. As an alternative, PAA proposed \$25 per night. The motion was carried by two favorable votes and 11 abstentions.

M 190 *Between Conferences 2 and 3.* A sleeper surcharge of £15 for single occupancy and £20 double occupancy per trip was agreed with three abstentions.

M 200 *Conference 3*. The present resolution was amended to show a sleeper surcharge of £15 single occupancy and £20 double occupancy. PAA abstained.

M 201 *Central and North Pacific*. A motion that the surcharge be \$50 per trip failed by one vote. PAA moved a surcharge of \$25 per trip. This was agreed with 10 abstentions.

M 202 *South Pacific*. A motion that the surcharge be \$25 failed.

#### *Free Baggage Allowance—Resolution 310*

M 203 No change was made to the free baggage allowance resolution at present in effect in Conference 1 and for Joint 1-2 traffic.

M 204 A proposal to increase the free baggage allowance in Conference 2 from 20 to 30 kgs. failed. It was agreed however, to increase the free baggage allowance in the Middle East to 30 kgs. and to reduce the break-point from £50 to £25 for passengers travelling within Southern and East Africa. Members stated that equipment limitations prevented an increase in Europe although in principle a uniform allowance throughout the Conference was favored.

M 205 A proposal to permit passengers to carry briefcases weighing no more than 5 kgs. was defeated.

M 206 In Conference 3 the free baggage allowance between India, Pakistan and Ceylon was reduced from 30 to 20 kgs.

M 207 The application of the free baggage allowance for around-the-world journeys and the London-Sydney route was considered. After a protracted discussion as to whether the 40 kgs. free baggage allowance for around-the-world passengers would be retained or the free baggage allowance universally be reduced to 30 kgs. (with the exception of cer-

[fol. 4425] tain areas where an allowance of 20 kgs. applies), it was finally agreed to maintain the 40 kgs. free baggage allowance for around-the-world journeys. Furthermore, in order to cover the London-Sydney problem,

the Conferences accepted the QEA proposal to permit passengers travelling between Europe on the one hand, and Australia, New Zealand and New Caledonia on the other hand, to be granted a similar allowance.

M/208 Résolutions 280/310, 370/310, JT23(8)310 and JT 123(6)310 reflecting the above agreements were agreed unanimously.

M/209 PAA recommended that Resolution 310 be amended to ensure that, in respect of cabotage services, Members do not grant free baggage allowances in excess of those provided for in Resolution 310. Air France, speaking as a carrier operating cabotage services, confirmed that they had been directed to give French civil servants returning from Colonies a greater allowance during off-season periods. This Member stated that they had no control over the matter since they were acting on instructions from their Government. The Conferences were informed, however, this practice had been discontinued several months ago and that Air France would make every endeavor to avoid undercutting IATA rates if, in the future, they are directed to re-introduce these baggage allowances.

#### *Pooling of Baggage—Résolution 319a*

M/210 This new resolution governs the pooling of baggage and permits two or more passengers travelling as one party to pool their baggage and grants a free baggage allowance equal to the combination of the individual free baggage allowances.

#### *Baggage Excess Weight Charge—Resolution 311*

M/211 The FRCS recommendation was agreed by all Conferences and Joint Meetings with an amendment to paragraph 3 to the effect that the reduced charge for pooling of baggage should apply after the first 10 kilograms instead of after each passenger had contributed 10 kilograms. A Member proposed that the excess charges be expressed in pounds in areas where pounds are considered the unit of weight. This was agreed and for the purpose of this reso-

lution, a conversion rate of 2.2 pounds per kilogram was established.

*Charges for Specific Baggage Items - Resolution 311a*

M/212 The new resolution as drafted by the FRCS was accepted by Traffic Conference 2. A motion to extend the application of this resolution to the Middle East received no support and was withdrawn.

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*Freight Forwarders and Consolidators*

M/213 The FRCS reported that PAA had proposed a revision of the quantity discount and mixed consignment resolutions in order to adapt IATA rate structure so that IATA carriers could derive more benefit from the sales efforts of air freight forwarders. Specifically, PAA suggested larger margins upon which freight forwarders could work and proposed introducing special discounts for shipments of over 500 and 1500 kilos which would apply to all the charges normally applicable to the consignments making up a shipment. Taking into account these additional breakpoints, it was not contemplated that commission would be payable on these shipments.

M/214 The advantages of encouraging the activities of freight forwarders was stated to be:

- (i) That this policy will give the air carriers large consignments instead of the present multitude of small consignments and, therefore, lead to a reduction in carriers' accounting and handling costs.
- (ii) That it would give the air carriers the benefit of the sales organizations of the freight forwarders.
- (iii) That it would ensure that in the U.S.A. the Government would continue its policy of requiring a freight forwarder to deal only with scheduled air carriers.

M/215 As against PAA's proposal, other Members pointed out the following disadvantages:

- (i) That there was a danger of air cargo being held up whilst consolidators gathered sufficient consignments to meet larger breakpoints.
- (ii) That the system tended to isolate the air carrier from its shippers by the creation of a middle man.
- (iii) That existing IATA-approved cargo agents would be antagonized by the development. In those countries where freight forwarders were not controlled as they are in the U.S.A., it would be difficult to make a distinction between the activities of a freight consolidator and an IATA-approved cargo agent.
- (iv) That although the consolidator would always pay the carrier the agreed IATA rate for the total shipment, he would nevertheless be in a position to quote lower rates to the public than those quoted by IATA-approved agents and the carriers themselves. In consequence, the IATA rate structure would be endangered.
- (v) That the development of the system would tend to give the consolidator a large measure of control over the IATA rate structure.

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M/216 Although the majority of the Committee was opposed, at this stage, to encouraging the development of freight forwarders, cognizance was taken of the fact that freight consolidation already took place on a fairly large scale, not only in the U.S.A., but in other parts of the world and the practice was spreading. It was held to be necessary that IATA should set up machinery for the regulation of freight consolidation which would take into account the different situations in countries where, unlike the U.S.A., freight forwarders are not regulated by a Governmental Agency. The possibility of control and development of freight forwarders was considered by the FRCS to fall into three categories:

- (i) Control of margins allowed by quantity discounts.

- (ii) Degree of consolidation on commodity-rated consignments by terms of the mixed consignment resolution.
- (iii) Registration and regulation of freight forwarders with IATA in the same way as IATA approved agents. In this connection the FRCS recommended that this should be studied by Agency Committees together with the question of whether IATA approved agents should receive commission when handling shipments presented by a freight forwarder.

M/217 The Conferences appointed an Ad Hoc Committee composed of FRCS and Agency experts to study this complex problem but the Group was unable to reach agreement on questions such as registration of freight forwarders and the payment of commissions. It was decided, therefore, to refer the matter to the Legal Committee and a joint FRCS and Agency Committee for study between now and the next Conference meeting.

*Quantity Discounts—Resolution 530*

M/218 Resolution 530 was agreed in all areas except Conference 1 on the basis of a 25% reduction against the basic rate at a 45 kilogram breakpoint. Aer Lingus and BEA abstained from voting in Traffic Conference 2 and AII abstained from voting in Traffic Conference 3.

M/219 SAS desired an increase in cargo revenue and felt that this could be obtained by reducing the rebate on quantity discounts. This Member was prepared to accept the continuation of the present system provided that cargo rates themselves were appreciably increased.

M/220 PAA proposed a breakpoint at 1500 kgs, with a ceiling of 34¢ per ton-mile over the North Atlantic. Their experience indicated that without this breakpoint traffic was being lost. However, in view of the unanimity amongst carriers in accepting the 45 kilogram breakpoint at 25% discount, they were, with extreme reluctance, prepared to abandon their suggestion for the time being. It was agreed,

however, to instruct Commodity Rate Boards to give special consideration to the filings involving shipments of 1500 kilograms and over.

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M 221 Resolution 160-530 adopted by Conference 1 establishes a floor for shipments weighing 1500 kilograms or more.

#### *Charges on Mixed Consignments—Resolution 513*

M 222 The FRCS proposed a liberalization of the present resolution but also realized that this might give rise to handling difficulties particularly in those countries where freight forwarders are not regulated by government action. An Ad Hoc Committee was created to study this question and submitted a redraft of the present resolution which was adopted by all Conferences and Joint Meetings.

M 223 It was noted that the mixed consignment rule filed by several carriers in Barrington's tariff does not conform with the present resolution.

#### *Minimum Charges for Cargo—Résolution 501*

M 224 When minimum charges for cargo were studied by the FRCS at Nicosia, consideration was given to the suggestion made by the Executive Committee arising from its meeting with the Universal Postal Union. The Executive Committee proposed that to avoid competition between administrations and air carriers for light parcel traffic a minimum charge be set for 5 kilos.

M 225 The FRCS was unable to accept this suggestion entirely because a flat rate on 5 kilos would result in extremely high charges on certain long route sectors such as the South Atlantic or the Pacific. The draft resolution submitted to the Conferences did, however, use the Executive Committee figure of 5 kilos but set a maximum of \$5. (\$7. for JT12 and JT123) and a minimum of \$1 and further exempted route sectors where parcel post services are not available. In the latter case, the minimum charge recommended was set at 4 kilo or 5 shgs., whichever is higher.

M/226 These changes have the effect of increasing the minimum charge wherever practicable and provide greater uniformity. The Conferences and Joint Meetings adopted the FRCS's recommendations with amendments to ensure that all sectors where parcel post facilities are not available are excluded. At the request of TCA, the resolutions for JT12 and JT123 provides for a minimum charge of \$5 instead of \$7 for consignments originating in Canada.

### *Cargo Classification*

M/227 The FRCS reported that it had studied the question of a cargo classification scheme and come to the conclusion that whilst such scheme could cover transportation from Europe to U.S.A. and Canada via the North Atlantic, it would not offer any appreciable simplification in Europe over the present commodity rate system. Although the principle of a classification scheme was favorably received, the FRCS believed that a change at this time would be premature. It recommended, therefore, that coordinated study be continued by the respective working groups of the New York and Paris Boards and that this study should include an analysis of the classes of the commodities carried by surface transport. In the meantime, Commodity Rate Boards should seek to establish greater order in their rates.

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M/228 The views expressed by the FRCS were accepted by the Conferences.

## COMMODITY RATES

### *Commodity Rates Board—Resolution 552b*

M/229 In view of the success of the Commodity Rate Board machinery, the FRCS recommended an extension of the jurisdiction of the Paris and New York Boards and also a broadening of membership of all existing Boards.

M/230 In the revised resolution submitted to the Conferences, a new paragraph (4) was inserted to emphasize that deviations from the normal practices relating to minimum charges, density requirements and charges in relation

to value must be clearly specified in the filing notice. A further provision (paragraph (3)(e)) was inserted to indicate the procedure to be followed where it is desired to establish a rate higher than the existing rate or to cancel the existing rate. Paragraph (8) was revised to deal with the effectiveness of rates established under previous resolutions. An amendment to permit filings on a per item basis was also recommended.

M/231 In principle, the FRCS proposal was accepted. Air India International did not wish the Board to have jurisdiction over commodity rates from India, Pakistan and Ceylon to Traffic Conference 1, Europe, or the Middle East as they believed that the system of filing their commodity rates with the Secretary and all Members under Resolution 552c was satisfactory.

M/232 Traffic Conference 1 authorized the New York Commodity Rates Board to approve or disapprove specific commodity rates wholly within Traffic Conference 1 in accordance with the resolution governing joint 12 traffic. It was also agreed that all specific commodity rates at present in effect be filed with the Commodity Rates Board by October 1, 1951 for study and appropriate recommendation. The Board was not authorized to change such rates without the consent of the Members concerned.

M/233 A motion to increase the membership of the New York Commodity Rates Board to five was agreed and the order in which panel representatives may sit on the Board was rearranged to prevent any individuals serving on the Board for more than three months during a 12 month period. It was understood that a representative nominated by a Member to serve on the Board must be a person wholly employed by such Member. The above decisions resulted in the adoption of Resolutions 160/552b, 280/552b, JT12-(8)552b and JT31(8)552b.

#### *Specific Commodity Rates—Resolution 552c*

M/234 Resolutions 552c (specific commodity rates in areas where there are no Boards) were altered to reflect the modified jurisdiction of the Specific Commodity Rates

Boards. At the recommendation of the FRC'S further modifications were made to bring this resolution into line with Resolution 552b with respect to the protest and cable notice filing procedures. 280/552c, 370/552c, JT23(5)552c and JT123(6)552c were adopted on the basis of the FRC'S proposal.

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#### *Application Form for Specific Commodity Rates*

M/235 The form for the filing of Commodity Rates Resolution 552d was altered so that more information may be available to judge the necessity for a commodity rate being placed into effect. Resolution 160/552d, 280/552d, 370/552d, JT12(8)552d, JT23(8)552d, JT31(8)552d and JT123(6)552d were adopted by the Conferences and Joint Meetings. Air France and TWA abstained from voting.

#### *Description of Commodities\**

M/236 At the request of the FRC'S at Nicosia, an alphabetical list of commodities was compiled by a Working Group and this list was submitted to the meeting. While it was realized that advantage would be gained by standardizing the numbering and description system for commodity rates, the Conferences did not wish to pass a formal resolution on this matter. It was decided, however, that with effect from January 1, 1952, Commodity Rate Boards be directed to adopt the numbering and description system and that new filings should be made in accordance with the new list of descriptions. The Secretary was instructed to circulate this list to all Members.

#### *Charges in Relation to Value—Resolution 503*

M/237 The FRC'S reported that although it was not fully satisfied with the present resolution, it was averse to making any change at this stage which would involve new instructions to staff. It recommended, therefore, the revalidation of the present resolutions by all Conferences and joint meetings. This was agreed with the exception that the term "basic rate" was changed to "normal rate."

M/238 In Conference 2 Aer Lingus abstained from voting and made the following statement for the record:

"A considerable degree of uncertainty exists with regard to legal liability on routes between Ireland and the United Kingdom. This position results from certain difficulties with regard to the ratification of the Warsaw Convention. As the result of this situation Aer Lingus is unable to offer a choice of rates for carriage of cargo and collects valuation charges for local traffic moving between these two countries. Aer Lingus does not wish to oppose the adoption of Resolution 503 and abstains from voting on the understanding that the Conference appreciates these difficulties and agrees that Aer Lingus be exempted from applying provisions of Resolution 280/503 for traffic between Ireland and the United Kingdom until such time as the position as to the legal liability with respect to the carriage of such traffic has been resolved."

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*Proration of Valuation Charges—Resolution 503a*

M/239 The Insurance Sub-Committee of the Financial Committee drew the attention of the Conferences to the confusion that exists, particularly in Europe, regarding the extent to which Resolution 503a is being applied. According to a circular letter issued by the IATA Paris Office on this subject, certain carriers were applying paragraph (1) of Resolution 503a without restriction; some were applying it with restriction, and others did not indicate whether or not they are applying the resolution at all. As a consequence, many carriers were experiencing considerable difficulty from an insurance standpoint. The Conferences noted these comments and urged Members, in their own interests, to conform to the provisions of Resolution 503a.

*Air/Rail and Air/Bus Interchange*

M/240 The FRCS recommended that Conference 2 appoint a Committee to study the possibilities of interchange arrangements with railway and bus companies in Europe. This was agreed and the following were appointed to ex-

ploy the matter and to make recommendations to the Conferences at its next meeting:

G. Deleaux  
D. Handover  
P. C. F. Lawton  
J. W. Meijer.

*Sea/Air Transportation—Resolution 160/153*

M/241 Resolution 160/153, amends the existing sea-air transportation resolution in Conference 1 by the deletion of the words "and the fare of the sea portion shall be  $\frac{1}{2}$  of the round-trip sea fare." This deletion was made in recognition of the fact that IATA cannot make provision for the fares steamship companies may charge.

*Mileages and Routes for Tariff Purposes*

M/242 PAA believe that the listing of mileages applicable against each fare and rate caused unnecessary work. The Conferences, however, agreed that it would be extremely useful for mileages to appear on the FRCS working papers but did not consider that it was desirable to specify mileages in formal fares and rates agreements adopted by Conferences.

*Proration of Joint Fares and Rates—Resolution 017*

M/243 The Conferences and Joint Meetings adopted Resolution 017 based on the recommendations made by the FRCS Committee. These recommendations provide for the determination of prorates in basic currency and a formula to prorate directional fares and rates so as to limit a carrier's prorated portion to not more than its applicable fare or rate. The new resolution also clarifies that minimum charges are to be prorated on the same basis as normal charges.

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*Proration of Involuntary Re-Routed Consignments—Resolution 018*

M/244 This new resolution clarifies the method of proration to be employed in the case of involuntary re-routed

consignments or shipments. Attention was drawn to the fact that the draft prepared by the FRCS covered only part of the problem. Certain legal difficulties are involved and the Clearing House Sub-Committee had stated that a new waybill should be prepared by the re-routing carrier. The Conferencees considered, however; that the draft was an improvement over the present situation and accepted the resolution as an interim measure. The FRCS was instructed to give the matter further study at its next meeting.

M/245 It was noted that the adoption of this resolution by all Conferencees and Joint Meetings necessitated an amendment to the IATA Interline Handling Agreement.

M/246 Air France, Aer Lingus, Air India, SABENA and KLM abstained from voting. KLM made the following statement for the record:

"According to our information the Clearing House and Revenue Accounting Sub-Committees noted that considerable accounting difficulties would be made if pro-rating of re-routed shipments are dealt with according to the above proposal. As this Committee will discuss this question at its next meeting, KLM has suggested that no specific action be taken by the Conferencees at this time and that the question be referred to the FRCS and Revenue Accounting Sub-Committees."

*Stop-Overs—Resolution 160/040*

M/247 Consequent upon the closing of Conference 1 fares, Members were willing to accept the same conditions governing stop-overs as at present in force in other Conference areas.

M/248 Resolution 160/040 was agreed unanimously.

*Changes in Fares—Resolutions 049 and 049b*

M/249 The Conferencees agreed to maintain the present resolution with the inclusion of exchange orders in paragraph 1. This decision resulted in the adoption of Resolution 049 for all Conference areas. BEA abstained from

voting as they do not favor the principle of passing on increases to passengers.

M/250 Resolution 280/049b was adopted at the request of BEA and Air France. These Members explained that they had agreed to an increase in the off peak fare between London and Paris from £10\* to £11 effective from June 1, 1951. Some 12,000 passengers had already purchased tickets for travel after July 1, 1951 and in view of the administrative difficulties involved in collecting the extra £1, BEA and Air France requested the Conference to grant exemption from the application of Resolution 049 in this particular instance.

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*Passenger Expenses at Connecting Points—  
Resolution 102a*

M/251 The FRCS recommended that paragraph 3 of the present resolution be amended to prevent money being paid to passengers or sales agents and, furthermore, revised paragraph 4 to restrict advertising and publicity.

M/252 Since the Conferences considered that these provisions were too severe, the resolution was redrafted to provide for Members filing notices, without protest, naming the city where money is paid to a passenger or sales agent for passenger expenses, the amount thus paid and the period of layover. With reference to paragraph 4 dealing with publicity and advertising the wording of the existing resolution was preferred although a small alteration was made to emphasize that Members should not advertise the absorption of transit costs as an inducement to travel.

M/253 In all resolutions adopted by the Conferences and Joint Meetings, specific provision was made for traffic from Australia or New Zealand travelling to Europe via North America. Members may advertise and pay such passengers a sum not exceeding \$15 U.S. in lieu of hotel accommodation and airport transfer charges in North America provided they are ticketed to depart from the North American continent within 84 hours after arrival. Braniff abstained from voting in resolution adopted by Conference I.

*Round-Trip Discount—Resolution 150a*

M/254. The Conferences accepted the changes to Resolution 150a, recommended by the FRCS. The resolution adopted by Conference 1 recognized that Members grant a lower discount than 10%, therefore, Resolution 160-150a sets the 10% discount as a maximum and not a specific discount as in the case of other Conference areas. It was also agreed that the constructed fare for traffic from Conference 1 to other areas should take into account the lower discount appertaining to the part of the journey in Conference 1.

M/255. In Europe where many round-trip fares have been introduced and those cases where specific points are served by more than one carrier, it has not been clear whether Members are prepared to accept re-routed passengers for the return trip at half the special fare. The question whether special round-trip fares are automatically available over the lines of two Members as in the case with the round-trip discount and also whether carriers should debit the issuing carriers half the normal return fare or only half the special fare was discussed.

M/256. Some Members stated that they would accept passengers at half the special round-trip fare; others declined to do so.

M/257. It was agreed that in order to clarify the situation, Members wishing to participate in any special fares introduced in Europe would so notify the Secretary who, in turn, would circulate this information to Members.

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M/258. In Conference 2 the provision governing the validity of the combination of the international fare and a domestic short-validity round-trip fare was deleted. It was felt that this provision should be covered when special fares are filed under Resolution 159.

*Circle-Trip Discount—Resolution 151a*

M/259. The draft submitted by the FRCS provides against the use of backhaul fares in the circle-trip reduction which results in undercutting round-trip fares. The Conferences and Joint Meetings adopted resolutions based on this draft.

M 260 In the case of Resolution JT12(8)151a, special provision was made for directional fares involving South Atlantic circle-trips.

*Open-Jaw Trip Discount—Resolution 152*

M 261 The only significant change in the resolution adopted by all Conferences and Joint Meetings was the deletion of paragraph 2 from the previous resolution. This paragraph now forms a separate Resolution 152b.

*Filing of Open-Jaws—Resolution 152b*

M 262 Although the FRCS recommended against the filing of open-jaws by rule, the Conferences accepted this proposal made by PAA. This change was considered necessary because some Members interpreted the previous resolution as requiring that open-jaws be filed as specific amounts between individual points. The new rules governing the filing of open-jaws requires the refiling of all open-jaws at present in effect. It also stipulates that an open-jaw shall not become effective if protested by a Member.

*Common Interest Group Travel—Resolutions 158 and 158a*

M 263 The Middle East Working Group recommendation to extend the application of Resolution 270/158 to cover traffic between Europe and the Middle East was not accepted. Traffic Conference 2 did, however, agree to an extension for traffic carried wholly within the area of the Middle East as defined in Resolution 280/158 and to add Iceland to the definition of Europe.

M 264 Resolution 280/158a moved by CAA and amended by Air France, permits Common Group Interest discounts to be offered wholly within Southern Africa and between Mauritius and Réunion on the one hand and Mauritius on the other.

M 265 At the request of TEAL, Resolution 370/158 was agreed amending Resolution 260/158 to apply between Australia and New Zealand. The number of people constituting a group was reduced from 15 to 10.

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*Creative Fares—Resolution 159*

M/266 The FRCS recommended revalidation of the present resolutions with an additional paragraph 7 permitting off-hour, on-hour combinations of half of the sum of the off-hour round-trip fare and the normal round-trip fare in the outbound direction. Filings of round, circle and open-jaw trips are also permitted under the new Resolutions 160/159, 280/159 and JT23(8)159, and it was also agreed to standardize journey time to 8, 17, 23 or 30 days, except within Europe where 30 day duration will not apply.

*Special Round, Circle and Open-Jaw Trips—**Resolution 159a*

M/276 In Conference 3 and for Joint 31 traffic, Resolutions 370/159a and JT31(8)159 were adopted to replace the existing special round, circle and open-jaw trip fares. Standardized ticket validities of 8, 17, 23 and 30 days apply and mileage limitations of 5,500 miles and 3,500 were agreed for Conferences 3 and 31, respectively.

*Family Fares—Resolution 166*

M/268 In agreeing the closing of fares and rates within Traffic Conference 1, Members decided that all rules contained in carriers tariffs would be expressed in resolution form. PAA drafted a Resolution 160/166—Family Fares—reflecting family excursion fares at present in their tariff. This resolution was adopted by the Conference.

M/269 CAA moved the revalidation of the present resolution which permits Members to establish discounted family fares between Johannesburg, Bulawayo and Salisbury. Resolution 280/166 was adopted and amends Resolution 270/166 to the extent that these fares are applicable to Johannesburg from Bulawayo, Livingston and Salisbury.

*Special Event Fares—Resolution 168*

M/270 Amendments to the existing resolution were proposed by the FRCS in order that more information should

be submitted by the proponent so as to provide some restriction in the use of Special Event Fares. Also, for the sake of uniformity, the protest rules applicable in Resolution 159 were inserted in Resolution 163. Resolutions 280/163 and JT23(S)163 incorporating these changes were accepted by Conference 2 and for Joint 23. A motion to adopt similar resolutions for Conference 3 and Joint 31 failed.

*Student Fares—Resolution 167*

M 271 Conferences 23, Joint 12, 23 and 31 adopted student fare resolutions setting the 26th birthday as the age limit.

M 272 In the joint resolutions covering travel to and from the United States and Canada, the student fare discount does not apply beyond the gateways of the North American continent. An exception was made in the case of 31 traffic

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[fol. 4436] to interior points of Canada where the discount is carried through to Montreal. Student fare reductions are permitted over the North and Mid-Atlantic routes during the off-season periods only. It was further agreed that a student should not be eligible unless he is attending a course of not less than a school year. The Conferences felt that owing to the administrative and distribution difficulties involved, a standard form of certificate was not considered necessary. However, the FRCS was requested to prepare a list of the information required from school or university authorities in order to determine a student's eligibility to receive a discount.

M 273 SAA proposed concessional fares for students travelling in groups for educational purposes during vacation periods between South Africa and Europe and South Africa and Israel. This proposal received no support.

*Student Nurses' fares—Resolution 280/167a*

M 274 Resolution 280/167a was adopted by Traffic Conference 2 at the request of Aer Lingus. This permits student nurses registered for training at any recognized nurses training establishment in Ireland or the United Kingdom to travel between these two countries at the student fare discount.

*Period of Ticket Validity—Resolution 280/276*

M/275 Arising from discussions on student fares, it was noted that validity of tickets in Europe was only 6 months and that this would be inconsistent with the student fare resolution. It was agreed, therefore, that the validity of normal fare tickets in Traffic Conference 2 would be 12 months with the exception of South Africa and East Africa, where the validity would be 6 months. Resolution 280/276, incorporating this change, was agreed unanimously by Conference 2.

*Conversion of Ticket Classification*

M/276 Resolution 278, adopted by all Conferences and Joint Meetings, contains the same provisions as the present resolution but in addition to round, circle and open-jaw trips, around-the-world trips are also covered.

*Free and Reduced Fare Transportation—Resolution 200*

M/277 It was the general sense of the meeting that the present resolution was unsatisfactory but Members were divided as to what steps should be taken to improve the regulations governing free and reduced fare transportation. On the one hand some Members proposed the liberalization of the resolution by the addition of a clause permitting the use of "principal's privilege." Other Members favored liberalization by the addition of other specific categories of persons to whom free and reduced transportation may be granted.

M/278 SAS stated that they had suffered considerable hardship under this resolution and quoted a recent case where they were unable to grant a free passage to a person who was travelling on business intimately connected with

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[fol. 4437] the affairs of the Company. This Member felt that in such instances managements should have the right to issue free transportation and suggested that the Conferences adopt the rule used for considerable time by the North Atlantic Shipping Conference to regulate the concession.

This rule reads as follows:

"Principals of the lines may, on purely personal grounds, grant free or reduced rates passages. Particulars of any such confessions to be reported to the Conference Secretary within a week of passenger's embarkation. The spirit of this clause is understood to be that reductions shall not be granted on personal grounds where the business is competitive."

M/279 Several Members strongly supported the necessity of this clause but others felt that the liberalization as proposed would result in lack of control, and in any case it would have difficulty in gaining acceptance by certain Governments.

M/280 An Ad Hoc Committee consisting of FRCS and Agency experts was created to study the problem. This Committee also considered a draft resolution proposed by TCA governing free transportation in connection with public relations contacts such as the press, publishers, etc., and its report recommended the adoption of a resolution incorporating the following:

- (i) The provisions of the present Resolution 200 with the amendment to paragraph (1)(c)(1) identifying an employee of a public relations agency regularly retained by an air carrier as an employee of the air carrier under the terms of the resolution. Similar recognition was extended to a business consultant or an employee or a member of a business consultant retained by an air carrier.
- (ii) Provisions, based on the draft submitted by TCA, permitting Members to grant free transportation to public relations contacts.
- (iii) Provisions, defining the basis on which "principal's privilege" may be exercised.

M/281 The Conferences considered that the last two mentioned questions should be covered by separate resolutions and adopted Resolution 200 applicable in all Conferences and Joint Meetings based on (i) above.

*Free Transportation—Public Relations—Resolution 209*

M/282 Speaking to the draft prepared by the Ad Hoc Committee created to study the general question of free and reduced transportation, some carriers feared that in spite of the fact that Members would be required to report

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[fol. 4438] to the Secretary details of any free transportation granted, the situation would get out of control. These Members however, were agreeable to the introduction of this resolution in Conferences 2 and 3 but were not willing to accept it in Conference 1 or for Joint 1 and 2 traffic.

M/283 SAA proposed that free transportation be limited to "permanent" members of the editorial staff of newspapers or magazines. This was agreed although it was recognized that, in practice, it would be difficult to determine the exact meaning of "permanent" and some Members felt that unless the resolution was worded in more precise terms it would be impossible for the Enforcement Office to perform its duties.

M/284 At the insistence of a Member, the paragraph permitting free passes to "any recognized professional freelance writer, such as photographer or cameraman" was deleted. The Conferences recorded, however, that this category of persons could travel without charge on special assignments.

M/285 With the above amendments the draft resolution prepared by the Ad Hoc Committee was approved by Traffic Conferences 2 and 3 and by Joint 23. Air India International, IBERIA, NWA, PAA, PAB, SAA and TWA abstained from voting.

*Free Transportation—Personal—Resolution 210*

M/286 The privileges granted under this resolution, which was based on a draft prepared by the Free and Reduced Transportation Ad Hoc Committee, are essentially the same as those contemplated by SAS and other Members in their suggestion that the Conferences adopt a "principal's privilege" clause in Resolution 200. The Ad Hoc Committee had

pointed out that it was virtually impossible for the Conferences to agree upon a definition of "principal" and for this reason had avoided use of the expression in the draft resolution. They had, instead, recommended empowering Member as such, to grant free or reduced transportation at their own discretion, but defined the terms under which such concession may be given and also set up machinery to enable each Member's activities to be kept under constant surveillance by other Members and the IATA Enforcement Office. In this manner they hoped that abuses would be avoided and that the resolution would not be used as a device to extend the granting of free and reduced transportation in order to promote sales.

M/287 Resolution 210 was adopted by Conferences 2 and 3 and for Joint 23 traffic but was not accepted by Conference 1 or other Joint Meetings. Air India International, ALI, Aer Lingus, BCPA, BEA, CPAL, Cyprus Airways, NWA, PAA, TWA and SAA abstained from voting.

*Children's Fares—Resolution 201*

M/288 Traffic Conference 1 adopted a new Resolution 160/201 which eliminated the charge for infants under two years of age.

M/289 The FRCS was instructed to study the applicability of children's fare reductions to student fares and to fares filed under Resolutions 159 and 163.

[fol. 4439]

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*Free or Reduced Fares for Tour Conductors—Resolution 204*

M/290 The Conferences considered a re-draft of Resolution 204 which contained modifications intended essentially for the purpose of clarification.

M/291 It was pointed out that in those areas where Resolution 158 is not applicable, Resolution 204 was being used as a device to grant common interest group travel discounts. The meeting felt that a clear distinction between the purposes of these two resolutions should be made and in the opinion of some Members, the present weakness

was to be found in the inadequacy of the definition of a "Tour Conductor." Attempts to improve upon the present definition were unsuccessful.

M/292 The main points of difference between Resolution 204 accepted by all Traffic Conferences and Joint Meetings and the present resolution are as follows:

- (i) One free passage may be issued for a tour conductor for a group of 15 and for each of the multiple of 15 thereafter.
- (ii) Paragraph 5(d) stated what has hitherto been implied—i.e. that the free passage for the tour conductor will not be used to rebate cost of the tour to any of the members of the tour.
- (iii) Paragraph 5(e) states in greater detail the requirements concerning advertising literature.
- (iv) That the terms "round-trip" and "circle-trip" used in Resolution 204 include transportation partly by air and partly by surface means.
- (v) Paragraph 8 stipulates the condition under which circumstances passengers must travel together and provides a workable solution whenever a carrier is obliged to transport groups on more than one flight owing to lack of space, and also when operating conditions prevent passengers from commencing transportation on the flight scheduled.

M/293 It was agreed that in the event of any government withholding approval of this resolution, a new Resolution 204a will be submitted for mail vote.

M/294 PAA abstained from voting in Conference 1, Joint 12, Joint 31 and asked that the matter be referred to the Agency Committees for study and further recommendation to the next Conference meeting.

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*Change of Routing—Resolution 279*

M/295 At the FRCS meeting in Nicosia no agreement could be reached regarding standard procedures to be

adopted for endorsement of tickets, reroutings, interchange or fare adjustments and the Conferences were requested to examine two draft resolutions; one submitted by BEA and another by TCA. An Ad Hoc Committee was created to consider these drafts and the Conferences and Joint Meetings accepted their recommendation as at Resolution 279.

#### *Low Density Cargo—Resolution 280/502a*

M/296 Resolution 280/502a adopted by Conference 2 for application wholly within Europe admits the convenience of expressing the low density factor in the metric system of measurement only and establishes the volumetric equivalent of 1 kilogram at a rounded off figure of 7,000 ccs.

#### *Lower Charge in Higher Weight Category—Resolution 504*

M/297 The Conferences and Joint Meetings agreed to make general the rule contained in Resolution 503 that the maximum charge for consignments in each weight group need not be more than the minimum charge for consignments in the next higher group.

#### *Livestock—Resolution 280/511a*

M/298 Traffic Conference 2 adopted Resolution 280/511a as recommended by the FRCS Committee. This modifies the present resolution by the addition of a new paragraph providing that the charge is applicable to both the animal and its container, the deletion of the word "unaccompanied," and the substitution of the word "normal" for "basic."

#### *Transfer Charges for Interline Shipments—Resolution 512*

M/299 The Conferences considered that the draft submitted by the FRCS lacked clarity and expressed a preference for the present resolution since it provided free transfer between Members at one airport.

#### *COD Service Charge—Resolution 512a*

M/300 Resolution 512a adopted by all Conferences and Joint Meetings establishes a "minimum minimum" COD service charge of 2/6 (Sterling) or \$0.35 U.S. and it was agreed that the collecting carrier shall retain those charges.

*Information Concerning Cargo Handling Charges*

M/301 The Conferences did not accept the FRCS recommendation to adopt a resolution governing the compilation and circulation of information concerning cargo handling charges and suggested that the matter be developed further by the FRCS.

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*Special Rates for Gold, and Platinum and Platinum Metals*  
*—Resolution 560*

M/302 The FRCS recommended that for Joint 12, 31 and 123 traffic special rates for gold shipments of 1,000 kilos or more should be applied at the 45 kilogram rate between the gateways. This was agreed but an exception was made in the case of gold consignments between Johannesburg and New York as SAA maintained that this traffic could stand the higher rate.

M/303 Resolution 560 was adopted by all Conferences and Joint Meetings. In TC 1 it was decided that no value charge or value surcharge will be assessed.

*Carriage of Gold as Baggage*

M/304 PAA reported that some Members permit the transportation of gold as baggage and in their opinion this was contrary to Resolution 560.

M/305 Air France stated that they had been accepting gold as baggage for some time. They felt that this was not contrary to the resolution since their charges were higher than those prescribed under Resolution 560. For instance, to Montevideo they charge approximately 500 francs per kilo more than they would charge if they applied the normal cargo rate plus the 150% surcharge for gold.

M/306 PAA explained that they considered the practice undesirable as it exposed Members to unnecessary restrictions, but were prepared to withdraw their objection on the understanding that carriers document the shipments as baggage and charge the gold rate.

*Newspapers and Periodicals—Resolution 561*

M/307 Resolution 561 adopted by all Traffic Conferences and Joint Meetings amends the present resolution to the extent that it removes the limitation that periodicals must necessarily be published "at least once a month" and also allow the discount to be applied against books. Where carriage is wholly within Europe, other than in Germany, the maximum discount applicable was agreed at 33½% as against 50% in other areas.

*Carriage of Human Remains—Resolution 280/562*

M/308 Most railway companies in Europe require that coffins be carried in separate freight cars and rates charged for such traffic are exceptionally high. In consequence, shipments of coffins by air are on the increase and it was the opinion of the FRCs that this traffic in Europe could stand a surcharge of 200%. This proposal was agreed and Resolution 280/562 was adopted. It was also decided that no quantity discounts on human remains would be permitted.

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*Special Rate for Personal Effects—Resolution 563*

M/309 In accordance with the Conference Provisions, PAA had given notice to rescind Resolution 563. This Member maintained that shippers use the subterfuge or personal effects to break the cargo structure and great quantities of merchandise are shipped at this reduced rate. Other Members who favored keeping the resolution stated that they were not conscious of such abuses and believed that the special rate was a factor in competing with steamship companies as it stimulated traffic by reducing to some extent the disadvantage of the limited baggage allowance by air.

M/310 A proposal that the use of this resolution be limited to passengers travelling by air and that travellers' samples be excluded specifically was not acceptable to PAA. In consequence, therefore, Resolutions 140/563, 260/563, 350/563, JT123(4)563, Special Rate for Personal Effects will be rescinded 90 days after the Bermuda meeting.

*Diplomatic Bags—Resolution 630*

M/311 The Joint Meetings agreed to adopt the present resolution with a slight amendment in paragraph 5. The expression "IATA cargo rates" has been modified to "applicable IATA cargo rates."

*No-Show and Cancellation Charges—Resolutions 728, 728a and 728b*

M/312 Under the present resolutions a "no-show charge" applies in Conference 2 and 3 and for all Joint Meetings. In addition, cancellation fees are charged in Conferences 2 and 3 and for traffic between these two Conferences. A motion to abolish all no-show and cancellation charges was defeated. A further motion to abolish cancellation charges, but to agree upon a minimum worldwide standard no-show charge of £5 also failed. Although a great deal of time was devoted by a working group and the Conferences to this question, it was not possible to achieve worldwide uniformity. The final position with respect to these charges is as follows:

(i) *No-Show Charge*

A no-show charge of £25 (\$70 U.S.) maximum and £2 (\$5.60 U.S.) minimum was agreed for Conferences 2, 3, JT23, JT31, JT123 and JT12 (traffic between South America and Conference 2 only).

(ii) *Cancellation Charges*

Cancellation charges of the same amounts were agreed for Traffic Conferences 2, 3 and JT23 and 12 (from points in South America to Europe and Africa only).

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(iii) At the request of Aer Lingus it was agreed that where the full fare is less than £2 (\$5.60 U.S.), no-show and cancellation charges will be assessed for the amount of the full fare.

M/313 To give effect to the above decisions, no-show Resolutions 280/728, 370/728, JT12(8)728, JT23(8)728,

JT31(S)728 and JT123(3)728 were adopted with IBERIA abstaining in Conference 2 and IBERIA and BRANIFF abstaining in the vote for JT12. The cancellation charges Resolution 280, 728a and JT12(S)728a, were agreed. No resolutions were required by Conference 3 or 23 since the present resolutions have an indefinite expiry.

#### *Consideration of Recommended Practices*

M 314. The Conferences noted that the FRCS Committee had not been able to agree unanimously to recommend the disposal of recommended practices. It was decided, therefore, that the matter be referred back to the FRCS for further study.

#### *Flight Line Numbers on Extra Sections*

M 315. TWA raised the question concerning the use of flight line numbers whenever a Member is operating extra sections. It was the sense of the meeting that the usual flight/line number should not be used. The Traffic Handling Committee was requested to study this matter.

#### *Air Waybill—Conditions of Contract—Resolution 540b*

M/316. BOAC in a letter to the Secretary of Traffic Conference 1 pointed out that insurance practices vary considerably and make it virtually impossible for international carriers who employ their individual brokers to be aligned on the question of all-risks covered. This Member suggested, therefore, that the wording of Clause 8 of the Conditions of Contract should be made optional to enable carriers to obtain the fullest possible cover which might conceivably also include cover which is specifically excluded by the existing Clause. It was noted that the Insurance Sub-Committee of the Financial Committee had supported this suggestion.

M 317. PAA referred to the position taken by the Legal Committee which apparently had felt that this provision should remain mandatory. However, since BOAC's suggestion would give the shipper more liberal treatment, PAA stated that they were willing to accept the change proposed.

This was agreed by all Conferences and the amendment was accomplished by the insertion of a new paragraph (2) in Resolution 540b which reads as follows:

"(2) that notwithstanding anything above the exact wording of Condition 8 of the Conditions of Contract shall be optional with each Member."

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### *Glossary of Traffic Terms*

M/318 PAA recommended that the Conferences review the terms relating to fares, rates, charges and schedules contained in the Glossary of Traffic Terms and agree formally on definitions of such terms. This Member pointed out that, from time to time, meetings among Members relating to the meaning of resolutions are handicapped because of the differences of the opinions as to the meaning of the term used in resolutions.

M/319 The Conferences agreed that the Glossary to date did not carry enough weight and although it had been approved by the Traffic and Legal Committees, the definitions set out in this Glossary were frequently overlooked in discussions.

M/320 An Ad Hoc Committee was set up to study this matter and reported as at Appendix "G" that it did not recommend formal binding action at this meeting of the Conferences. It did, however, suggest that the Glossary be submitted to the Traffic and Legal Committees to prepare appropriate recommendations for consideration by the Conferences at the next composite meeting. This report was adopted and the Conferences emphasized that the necessity to agree upon definitions was of vital importance to the interpretation of all resolutions.

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### **TRAFFIC COMMITTEE RECOMMENDATIONS**

#### *Standard Form of Effectiveness Resolution*

M/321 The Chairman of the Traffic Committee explained that the new recommendation (TC11/001) was intended to tidy up the effectiveness resolution and to eliminate the

weaknesses found in the previous form of effectiveness resolutions used by the Traffic Conferences.

M/322 The Legal Drafting Officer added that in order to clean out the mass of the old effectiveness resolutions in the Traffic Manual of Resolution, the new draft included an additional clause to the effect that all resolutions heretofore adopted would be made subject to the new standard effectiveness resolution.

M/323 It was also explained that the basis of the proposal was that each resolution should carry its own indication of type, its own filing date and its own expiry date, if any. By this means, 90% of the resolutions adopted at each meeting could be covered by a single effectiveness resolution for each individual Conference or combination of Conferences. Different effectiveness resolutions would only be required to cover special cases.

M/324 This recommendation by the Traffic Committee was agreed unanimously.

#### *Joint Fares with non-Scheduled Operators*

M/325 It was noted that the Traffic Committee had come to the conclusion that it was impossible at present to take any further action on joint fares with non-scheduled operators. However, the Committee was prepared to consider the matter again, if necessary.

M/326 One Member referred to the report of the Middle East Working Group which inter-alia dealt with this problem. It was agreed that the report should go to the Traffic Committee as it outlines some of the difficulties of the small carriers and the various steps which might be taken.

#### *Charters—Resolution 045*

M/327 The Chairman of the Traffic Committee pointed out that the recommendation submitted to the Conferences had been drafted with a view to stopping the use of Charters as a means of undercutting fares. At the same time the Traffic Committee had intended to leave a reasonable amount of freedom to Members and had taken into consideration the Legal Committee's comment on the subject.

M/328 NWA referred to their particular situation of having approximately 50% of their aircraft grounded and this Member hoped that these difficulties would be taken into consideration when redrafting the resolution. Whilst they had every intention to living up to IATA rules and regula-

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[fol. 4446] tions, they felt that they should be left with the necessary amount of freedom with respect to chartering equipment.

M/329 PAA drew attention to the new regulation set up by the CAB pertaining to the chartering of aircraft and felt that this had a bearing on the Traffic Committee's proposal. Air India Ltd. stated that their government had authority to requisition space on their services at any time, and requested that this aspect of the problem be borne in mind. Chicago & Southern referred to their recent introduction of the sale of "speed-pack units" on a rate per mile basis and hoped Conferences did not consider this practice as being contrary to the resolution. At the request of the Conferences, the Traffic Committee re-examined its recommendation in the light of the CAB's action and of the various comments expressed by Members.

M/330 At the latter stages of the meeting, the Traffic Committee submitted a revised draft of a charter resolution. The Traffic Committee pointed out that while only U. S. carriers were bound to implement the CAB regulation, there was likelihood that the CAB would take action which would adversely affect all scheduled carriers operating to the United States if IATA did not work out a satisfactory resolution. For this reason, the new draft, although based on the Traffic Committee's previous recommendation, took into account the CAB's requirements and in particular, attempted to be more specific with respect to the meaning of the term "general public."

M/331 Attention was drawn to the fact that while the proposed resolution might be satisfactory with respect to operations regulated by the CAB, it might not be suitable for application to other operations, such as those within

Europe. For example, it did not permit charters to agents for passenger transportation and intra-European operators might feel that carriers should be free to make such charters. The Traffic Committee suggested that even if they were not disposed to adopt the resolution at present, Members in other areas such as Traffic Conference 2 might perhaps be able to discuss with their governments the possibility of undertaking to bind themselves to such a resolution, in the future.

M/332 The Traffic Committee felt that during the current sessions, Conference 1, Joint 12 and Joint 31 might well adopt the draft resolution and in other areas allow the current resolution to remain in effect.

M/333 The Conferences then considered Traffic Committee's latest recommendations. Air France point out that they were compelled by government contract to carry mail on all services whether chartered or not. This Member was unable to accept any limitation for carriage of mail in the charter resolution.

M/334 A further draft was prepared incorporating changes required by Members, and this was submitted to Conference 1, Joint Meetings 12 and 31. The Joint Meetings were unable to accept the new resolution. Members

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[fol. 4447] acknowledged that it represented an improvement over the present resolution but they were reluctant to adopt charter rules which had not been given legal clearance. In particular, they felt the full implications of paragraph 11 required careful study, and they believed that the conditions imposed under paragraph 9 relating to the charter or leasing of aircraft from one air carrier to another were unworkable as it presumed to regulate the action of non-IATA carriers.

M/335 In view of the objections received, it was decided to revalidate the present JT12 and JT31 resolutions and to refer the draft back to the New York Charter Working Group set by the FRCS at Nicosia for further study. This Group was authorized to draft a charter resolution for mail vote action by Conference 1 and JT12 and JT31. It was also

authorized to finalize its work with respect to a minimum rate formula for Conference charter rates and to prepare a resolution for mail vote.

M/336 At an individual meeting of Traffic Conference 1, Braniff again stated that they could not agree to the closing of fares and rates in Traffic Conference 1 unless a satisfactory charter resolution was adopted. This Member considered the final draft submitted by the Traffic Committee as a suitable resolution. In view of the firm position taken by this Member, the Conference accepted a resolution based on this draft. Resolution 160/045 amended the draft to the extent that paragraph 11 was deleted entirely and the provisions contained in paragraph 4 of the present resolution 045 replaced paragraph 9.

M/337 Conferences 2 and 3 agreed to retain Resolutions 270/045 and 338/045 respectively. KLM gave notice that they would not be bound by Resolution 270/045 90 days after the next Conference meeting.

M/338 The charter question was also discussed at an individual session of Traffic Conference 2 when it was recognized that the present resolution required modification. Since time did not permit this being done at Bermuda, it was agreed that a Committee be appointed to study charters and report to the next meeting. Various interpretations of the present resolution were discussed but the Conference was unable to arrive at satisfactory conclusions. The main questions causing difficulties were:

- (i) Does Resolution 045 permit the same aircraft to be chartered to more than one charterer at the same time and for the same journey?
- (ii) May a Member resell space on a chartered aircraft to the general public at IATA fares and rates?
- (iii) May an individual person resell charter to another individual person and if so, what is the relationship between the rates charged?

M/339 The Conferences felt that it would be necessary to coordinate study of the charter question and with this in

mind requested the Secretary of the Traffic Committee to prepare and circulate a charter questionnaire to all Members. On the basis of replies received to this questionnaire

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[fol. 4448] and the reports of the study groups (the New York Group and the Committee to be established by Conference 2), the Traffic Committee, at its next meeting, should undertake a global study of the charter question.

#### *Alcoholic Beverages*

M/340 This matter was discussed at some length but no agreement could be reached. One group felt that since carriers did not live up to the present resolution, it should be rescinded. Other Members opposed this proposal. Finally, it was agreed to retain the present resolution but to ask the Traffic Committee to consider the whole question of "giveaways."

#### *Family Travel Plan*

M/341 The Conferences agreed that no action be taken at the present time.

#### *Bulk Travel Plan*

M/342 The Conferences agreed that no action be taken at the present time.

#### *Free and Reduced Transportation*

M/343 This item is discussed under M/277 to M/281 of this report.

#### *Carrier Names and Abbreviations—Resolution 275c*

M/344 In the draft Resolution (TC11/275c) recommended by the Traffic Committee provision was made for the addition of new abbreviations between Conference meetings.

M/345 On the question that Members publish all abbreviations in tariffs and timetables, it was pointed out that there were good legal reasons for doing so in order to obtain maximum benefit under the Warsaw Convention. BEA suggested that this requirement was too exacting. This view

was supported by other Members and as a compromise, it was agreed to delete this mandatory provision in Resolutions 160/275e, 280/275e and 370/275e adopted by the Conferences.

*Form of Baggage Tag—Resolution 300*

M/346 The Madrid Traffic Conferences had adopted a new form of baggage tag for use as from January 1, 1951. The reason for this was to bring the IATA baggage tag into line with that of the ATC. However, as the ATC had made certain changes since it had introduced the form which the Conferences had adopted for Madrid, the IATA form was still out of line with that of the ATC. Furthermore, there had been no standard procedures covering the use of the ATC type of tag as there had been no opportunity to prepare these during the Madrid meeting.

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M/347 The Traffic Committee had studied the matter and in their recommendation (TC11/300) felt that in order to obtain uniformity with the ATC, the Conferences should be asked to adopt the latest ATC tag. Minor drafting changes in the procedure were also submitted by the Traffic Committee.

M/348 In essence the draft resolution was found acceptable to the Traffic Conferences and Resolutions 160/300, 280/300 and 370/300 were adopted.

M/349 American Airlines stated their experience showed that the practice of indicating the transfer cities in code is conducive to error. It was agreed, therefore, to spell out city names in full rather than to use abbreviations.

M/350 With reference to the tag itself, it was agreed that the date of issuance could be left out unless its inclusion is particularly required by the Legal Committee and that the method of stapling together of baggage tags be optional.

M/351 Air France, supported by PAA, suggested a few changes such as making allowance for space to insert the number of checked baggage items and to show the total weight of the baggage. Accordingly, paragraph 3 was amended to show that it is optional to make space for the total weight and for the total number of pieces.

M/352 Since some carriers used the 24 hour clock, the reference to A. M. and P. M. on the baggage tag was deleted.

M/353 It was agreed that the attention of the Traffic Handling Group of the Traffic Committee be drawn to the above changes with a view to similar changes being agreed by the ATC.

*Excess Baggage Ticket--Resolution 301*

M/354 The Conferences agreed to amend Resolution 140/301, 260/301, 350/301 by the insertion of the following in paragraph (11):

"(h) inclusion and use of an additional line entitled '(Excess Wt) Chge. (g ..... per kilo Cy)' immediately below the line similarly entitled."

*Transshipment and Terminal Charges--Resolution 512b*

M/355 The Conferences were unable to accept the Traffic Committee's recommendation (TC11/512b) that the transhipment and terminal charges lying solely within the control of Members be eliminated as much as possible since the accounting costs involved are not compensated by the revenue which accrues.

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M/356 BEA pointed out that under transhipment charges, cartage between airports was a major item of expense and could not agree that Members should absorb these charges.

*Place and Airport Name Abbreviations--Resolution 538*

M/357 The Conferences accepted the Traffic Committee's recommendation (TC11/538) which was aimed at facilitating interline cargo handling. It was agreed, however, that the Cargo Handling Working Group should make a further study of the question of designators as it was understood that certain Members are at present using four letter city designators instead of the three letter designator shown in the Universal Interline Reservations Code.

*Form of Air Waybill/Consignment Note (AWB)—  
Resolution 540*

M/358 The Chairman of the Traffic Committee pointed out that the recommendation submitted to the Conferencees did not contemplate any changes to the form of the air waybill but did recommend improvements to the procedures.

M/359 The Conferencees agreed to alter paragraph (2)(a) to read as follows: "proof of receipt of the goods for shipment" and to delete sub-paragraph (2)(e)..

M/360 The KLM suggestion to use a maximum number of seven digits in the serial number was accepted.

M/361 In the opinion of one Member, copy 8 should be kept by the first carrier in case of prepaid consignments but should go forward whenever the transportation charges are to be collected at destination. The Cargo Handling Group was requested to give this matter study.

M/362 With reference to paragraph 9 (o) it was agreed to modify the wording in order that subsequent carriers, not only the first carrier, may make a notation on the air waybill on the apparent condition of the goods and of the packing. It was noted that this provision is already included in the Conditions of Carriage.

M/363 SWISSAIR suggested that since carriers are entitled to inspect passenger's baggage, this Member felt that carriers should be entitled to make a similar inspection in the case of cargo. The meeting supported this view and requested the Cargo Handling Group to study the matter.

*Irregularity Report (IRP)—Resolution 543*

M/364 The Conferencees adopted the Traffic Committee's recommendation (TC11/543) with an amendment in paragraph 1 to provide that the IRP should be "forwarded by airmail or fast means normally used" and with the further amendment that the number of copies to be prepared be left to the carrier's discretion.

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*Cargo Accounting Advice (C.A.A.)—Resolution 544*

M/365 The Traffic Committee's recommendation (TC11/544) was adopted with minor drafting changes. Paragraph (1), third line, was amended to read "IATA or ATA Revenue Accounting Manuals."

*Transfer Manifest (TRM)—Res. 545*

M/366 The Traffic Committee's recommendation (TR11/545) was adopted. KLM abstained from voting and stated that:

"with regard to the mandatory use of the transfer manifest for interline cargo shipments, according to the information received from the KLM representative at the meeting of the Clearing House and Revenue Accounting Sub-Committee, there was a general feeling that instead of the transfer manifest another document such as a transfer coupon accompanying each individual shipment would offer a better solution and suggested that the problem be referred back to the Clearing House and Revenue Accounting Sub-Committee."

*Cargo Identification Tag or Label—Resolution 546*

M/367 The Conferences adopted the Traffic Committee's recommendation (TC11/546) with a minor drafting change in the first line of paragraph (1). The expression "lot" was changed to "bulk lot". It was understood that the label may also be used for consignments consisting of one package.

*Aircraft Differentiating Label—Resolution 549*

M/368 The Traffic Committee Recommendation (TC11/549) was accepted unanimously by all Conferences with the amendment that the Spanish text on the label should be amended to read: "No cargar en aviones de pasajeros."

*Interline Tracer (TRC)—Resolution 550*

M/369 The Conferences adopted the Traffic Committee's recommendation (TC11/550).

*Prepaid Ticket Advice (PTA)—Resolution 740*

M/370 Braniff strongly recommended that the draft resolution submitted by the Traffic Committee (TR11/740) be modified to indicate clearly that the issuing carrier should be held responsible for the validity of the issue wire.

M/371 PAA referred to Section B covering "Scope" and suggested that it should be extended to cover various forms of taxes and other incidental charges.

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M/372 SAS proposed that Section D, paragraph (3) be modified to reduce the period from three months to one month in the case of a prepaid ticket advice being unpaid.

M/373 With the above amendments, the Conferences adopted the Traffic Committee's recommendation.

*Reservations for Cargo—Resolution 751*

M/374 Traffic Conference 2 agreed to rescind Resolution 220/751 as recommended by the Traffic Committee (TC11/751).

*Form of Interline Cargo Handling Agreement—Resolution 850b.*

M/375 The Conferences adopted the Traffic Committee's recommendation (TC11/850b) as amended by the Legal and Financial Committees.

M/376 KLM made the following statement for the record:

"As this resolution embodies the same provisions for proration and re-routed cargo shipments as Resolution 018, the same objections recorded in respect of Resolution 018 apply to the Interline Cargo Handling Agreement. According to our information the Clearing House and Revenue Accounting Sub-Committee noted that considerable accounting difficulties would be encountered if prorating of re-routed cargo shipments are handled in this manner. As this Committee will discuss the question at its next meeting, KLM suggests that no specific action be taken by the Conference at this time and that the question be referred to the FRCS and Revenue Accounting Sub-Committees."